

it is pointed out that the judgment of the fairness of the merger ratio in the absence of independent relationships needs to be considered separately.

7. Labor Law

Hewlett Packard Japan case

Supreme Court, April 27, 2012

Case No. 903 of 2011, 1055 RODO HANREI 5

Summary:

Employer's appeal dismissed. Continuous absence at work of an employee suffering from mental illness is not an "absence without leave" pertaining to disciplinary action under the office regulations. The employer should organize a medical appointment with a psychiatrist for such an employee as well as recommend relevant medical treatment and consider measures such as temporary leave, if necessary.

Reference:

None.

Facts:

X, an employee of Y (Hewlett Packard Japan), alleging that he was being observed and harassed by a group of people through the interference of colleagues at work, asked Y to investigate the issue. However, the results of investigation carried out by Y turned out unsatisfactory to X. X then asked Y to give him a special temporary leave until the present case gets resolved. Y did not allow such a leave and encouraged X to come to work. In response to that, X persisted that he would not be able to come to work until he is factually convinced that the present situation has been settled. Thus, X took all paid leave that he was entitled to and continued absence for the additional 40 days. On 28 August 2008, Y notified X of "instructed resignation" as of 30 September 2008, on the grounds of "absence without leave" (referred to hereinafter as the "disciplinary measure").

Under such circumstances, X brought an action to the court, arguing that X's absence at work was not "without notice" and thus cannot be regarded as "absence without leave" pertaining to disciplinary action (X's argument at the first trial). Furthermore, X argued that Y was aware of the abnormal state of the X's mental health and was supposed to take a relevant measure such as temporary leave as a matter of fulfilling the employer's obligation to consider the employee's safety and security. Thus, X claimed that the disciplinary measure taken in breach of the above-said obligation was null and void (X's supplementary argument at the second trial), demanding the confirmation of his status as an employee of Y and payment of unpaid remuneration for the period starting from the effective date of the disciplinary measure.

The court of first instance, the Tokyo District Court, dismissed X's arguments and found that the disciplinary measure was valid as the X's absence at work was an act of "bad faith", which could be regarded as an abandonment of job. The court of second instance, the Tokyo High Court, on the other hand, overturned the decision of the District Court and found as follows. First, it admitted that X's continued absence was due to persecutory delusion or some sort of sickness of psychological nature and therefore can be regarded as "sick leave" anticipated by the office regulations. As such, Y could not expect X to submit a request for leave in advance without X being 'conscious of his illness'. Moreover, by asking for a special temporary leave, X 'asked his supervisor for leave in an appropriate manner' and therefore it is not reasonable for Y to treat his absence as an "absence without leave". Thus, the High Court accepted X's arguments in full. Against this decision, Y appealed.

Opinion:

The employer's appeal was dismissed.

It is easily foreseeable that an absence of an employee suffering from mental illness will continue until he recovers from such illness, and therefore the Appellant, as the employer, is expected to take necessary steps including appointing a medical check-up by a psychiatrist, as far as it can be established that the absence is due to, or originates from the circumstances as mentioned above (according to the records, the office regulations of the Appellant contain provisions that allow the employer to

undertake occasional medical check-ups for its employees whenever it believes it is necessary). The employer then should, in accordance with the outcome of the medical check-up, encourage medical treatment or consider taking measures such as temporary leave and observe the progress of the situation. Taking a disciplinary measure such as “instructed resignation” instantly without taking the steps outlined above, on the belief that the absence of an employee is an absence without leave for the grounds of absence are based on the non-existing facts, cannot be regarded as an appropriate response of an employer to the behaviour of the employee suffering from mental illness.

Under those circumstances, the above-mentioned absence cannot be regarded as “absence without leave” or absence lacking reasonable grounds pertaining to disciplinary action under the office regulations, and therefore the disciplinary measure shall be regarded null and void.

Editorial Note:

The present decision is supposedly the first decision of the Supreme Court denying the validity of a disciplinary measure taken against the behaviour of an employee suffering from mental illness. The decision attracts attention as the Supreme Court provides quite concrete description of the steps and measures that the employer is expected to take in the case of continued absence of an employee suffering from mental illness. These are: organizing medical check-up by a psychiatrist, recommending relevant medical treatment and considering measures such as temporary leave, if necessary.

8. International Law and Organizations

Xs v. Y

Tokyo High Court, December 26, 2012

Case No. (*ne*) 5476 of 2009

Summary:

The Tokyo High Court denied the claim for restitution and payments