6. Labor Law/Social Security Law

X v.s. Y
Supreme Court 2nd P.B., June 8, 2014
Case No. (*jyu*) 2430 of 2013
1118 Rodo Hanrei 18

Summary:

In the case that a worker, who has suffered an injury resulting from an employment-related cause and received a compensation pension under the Article 12-8 (1) (i) of the Industrial Accident Compensation Insurance Act (IACIA), failed to recover from the injury within three years from the date of the commencement of medical treatment, the Employer shall be exempt from the Restriction on the Dismissal of Workers under the Article 19 (1) of the Labor Standards Act (LSA) by way of compensation for discontinuance in accordance with Article 81 of the same Act.

Reference:

Articles 19 (1), 75, 81, 84 of the LSA, Article 12-8 (1) (i) of the IACIA

Facts:

1. The appellee X (Worker; a plaintiff of the first instance, and an appellee of the second instance) had worked for the appellant Y (Educational corporation; a defendant of the first instance, and an appellant of the second instance) after they concluded the Labor Contract with each other on April 1, 1997. X had complained of symptoms such as shoulder discomfort around March 2002 and had been diagnosed as suffering from Cervico-Omo-Brachial Syndrome, then he had been absent from work intermittently after April of the same year. From January 17, 2006, he eventually had begun a prolonged absence, and it was determined that his Syndrome falls under an injury resulting from an employment-related cause at the time of March 20, 2003, so that he is eligible to received the Medical Compensation Benefits (MCB) and

Temporary Absence from Work Compensation Benefits (TAWCB) in accordance with the IACIA.

2. Y, on October 24, 2011, by reason that X could not return to work considering the course of time and his attitude, paid compensation equivalent to the average wage that would be earned over 1,200 days (Compensation for Discontinuation of the Medical Compensation), and subsequently on October 31, sent the intention of dismissal to him. In response, X brought an action seeking the declaration that he continues to hold the status under the labor contract.

3. The decision of the first instance (the decision of Tokyo District Court on September 28, 2012, 1062 RODO HANREI 5) and the second instance (the decision of Tokyo High Court on July 10, 2013, 1076 RODO HANREI 93) both decided that dismissal in this case should be invalid. Y appealed against this decision.

Opinion:

The court quashed and remanded the case.

1. Provided that the IACIA was proclaimed and enforced on the same day as the LSA prescribing the duty of the employer to the Accident Compensation (AC) for the worker who suffered an injury resulting from an employment-related cause; that there could be detectable the correspondence relationship between the duty to the AC specified in Chapter 8 of the LSA and Insurance Benefits specified in the article 12-8 (1) (i) of the IACIA; that the article 84 (1) of the LSA stated the employer could be released from the duty to provide AC in the case that Insurance Benefits (IBs) above were paid in accordance with IACIA; the aim of the IACIA and the details of both Acts, 'IACIA is the system, subject to the duty to pay the AC prescribed in the LSA, granting IBs instead of the AC from employers in order to reduce the burden on them and to give workers as victims prompt and fair protection. We could see such IBs based on the IACIA as benefits which the government on behalf of employers fulfills the duty to the AC by way of insurance…. In this way, we could say the IBs specified

in the article 12-8 (1) (i) to (v) of the IACIA are the alternative compensation to the AC of the LSA correspondingly.'

2. 'The provision of the Compensation for Discontinuation (CD) enables employers both to discontinue the AC from then on by paying compensation equivalent to the prescribed amount and to be released from protracted burdens caused by medical treatment of injured workers.' Hence, with the Opinion 1 said above, 'the fact the IBs have been paid to a worker has been identified as being simultaneous with the case that the duty to pay the AC of an employer in accordance with LSA has been discharged,' so that 'it is impossible to say we should distinguish the application of the proviso of 19 (1) [of the LSA] ' between the case 'having discharged the duty to pay the AC by an employer' and 'being paid by the IBs of the IACIA.'

'We should understand, accordingly, that the worker who has received the MCB specified in the article 12-8 (1) (i) of the IACIA would be included in a worker receiving compensation pursuant to the provisions of Article 75 specified in the article 81 of the LSA.' 'Therefore we should conclude that, given the worker has received the MCB specified in the article 12-8 (1) (i) of the IACIA, but not yet get cured his injury within 3 years, his employer could assert to have applied the proviso of the Article 19(1) of the LSA, namely the exemption from Restriction on the Dismissal of said workers, by way of paying the CD stated in Article 81 of the same Act.

In this case, Y paid the CD for X…on the ground that X receiving the MCB of the article 12-8 (1) (i) of the IACIA had not yet been cured within 3 years after beginning his medical treatment, so that the dismissal in this case would not be in violation of the Article 19 (1) of the LSA.' The court therefore decided to quash the judgment of the prior instance, and 'to send this case to the original court so as to further have them re-examine the validity of Y's dismissal in the light of Article 16 of the Labor Contract Act'

Editorial Note:

1. In recent years, the numbers of workers are increasing who suffer injury or disease, especially Mental Disease, and need a long medical

treatment, thus a lengthy absence from work. For their employer, it is presumably difficult to decide whether or when to return them to the workplace, though their injury or disease would be cured. This case was concerned with the worker who suffered from, not Mental Disease, but Cervico-Omo-Brachial Syndrome and took absence from work for a long time, so that were dismissed by his employer. The worker X was not within the scope, on the written terms, of the exemption from the Restriction on the Dismissal (the Article 19 (1) of the LSA), which is restricted to workers who have received compensation pursuant to the provisions of Article 75 of the LSA. But Y, his employer, dismissed X on the ground that paying the CD enables Y to be released from the Restriction on the Dismissal on the premise that X was within the scope of the exemption. Then, the issue was whether the exemption from the Restriction on the Dismissal could be applied, beyond express provisions, to the worker like X.

The first and prior instance focused on the written provision and judged that the exemption from Restriction on the Dismissal should never be applicable to this case. The Supreme Court, on the contrary, decided that where the medical treatment for a worker who has received the Insurance Benefits of the IACIA is longer than 3 years, he was essentially identical to a worker receiving compensation pursuant to the provisions of Article 75 of the LSA, and thus the exemption from Restriction on the Dismissal should be applicable to this case.

2. The article 75 (1) of the LSA states "in the event that a Worker suffers an injury or illness in the course of employment, the Employer shall furnish necessary medical treatment at its expense, or shall bear the expense for necessary medical treatment," that is, the employer should bear the AC. The IACIA, on the other hand, proclaimed and enforced on the same year of the LSA, obliges employers to pay insurance premiums in advance, and would provide the necessary IBs in case of the duty of employers to pay the AC arising. Hence the worker 'who suffers an injury or illness in the course of employment' of Article 75 of the LSA could be received IBs by claiming benefit to Chief of the Labor Standards Inspection Office (Article 12-8 (1) of the IACIA). In addition, the employer shall be exempt from the responsibility of providing

compensation under this Act in the event that IBs are to be made (the Article 84 of the LSA).

Nevertheless, the IACIA, after having been enacted, had set out different types of the benefits from the AC, such as (a long-term) pension benefit, and had enriched the level and content of the benefits compared with the AC under the LSA. The injury and disease compensation pension, which is a particular type of benefit stated in IACIA, shall be paid only to 'a worker who suffered an injury or disease resulting from an employment-related cause,' but would meet both requirements that (1) the said injury or disease had not been healed or been cured; and (2) the degree of disability due to the said injury or disease falls under a fixed grade of injury and disease, after one year and six months have elapsed after the commencement of medical treatment (Article 12-8 (3) of the IACIA).

3. As to the provision of dismissal, article 16 of the Labor Contract Act states that 'A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid.' In addition to this article, the article 19 (1) of the LSA states that employers shall not dismiss a worker during a period of absence from work for medical treatment with respect to injuries or illnesses suffered in the course of employment, nor within 30 days thereafter.

However, with respect to the worker who has been absent for more than 3 years, if his/her employer pays CD (Article 81 of the LSA), which is compensation paid voluntarily by employers in the event that 'a Worker receiving compensation pursuant to the provisions of Article 75' fails to recover from the injury within 3 years from the date of commencement of medical treatment, such an employer could be exempted from the Restriction on the Dismissal above (the proviso of the Article 19 (1)). The subjects of the exemption are either the worker of Article 75 of the LSA or the worker who receives an injury and disease compensation pension on the day when three years have elapsed after the commencement of medical treatment (Article19 of the IACIA).

4. The judgment of the Supreme Court said that 'IBs specified in the article 12-8 (1) (i) to (v) of the IACIA are the alternative compensation to

the AC of the LSA correspondingly.' Indeed, as we saw in note (2) above, it does not misunderstand that IBs in fact take over the compensation based on the duty to pay the AC of the LSA. However, when focusing on the relative enrichment of the benefits of the IACIA, we can also see that the IACIA have gone beyond the responsibility under the AC, so that this part of judgment (Opinion 1) would not be decisive for their conclusion.

Rather, the main issue we have to consider is the meaning of the exemption from the Restriction on the Dismissal (the proviso of the Article 19 (1)). The legislators said about this point that it was 'in order that prolonging unduly the labor contract shall be prevented as a result of the Restriction on the Dismissal' (K. Teramoto, The Commentary of the Labor Standard Act, Shinzan-sha, 1998). Based on this explanation, it is important to think about whether applying the Restriction to a worker (thus X) who fails to recover from the injury beyond three years but cannot receive the injury and disease compensation pension results in prolonging "unduly" the labor contract. The court, however, said little or nothing about the issue.

5. This case forces us to reconsider the aim of the regulation on the dismissal for workers with long-term illness. For such workers, in addition to the dismissal regulation, it is equally important that they restore his/her ability to work and thus manage to return to the workplace. We have to think how to assist their return to work appropriately. This point is closely related to the review of the abuse of employer's right to dismiss a worker, which the remanded court will examine, in which the court is able to consider not only substantial facts, such as the legality of the grounds on the dismissal, but also collaterally related facts, such as the process of reaching the decision and the appropriateness on their assistance toward returning to the workplace. So, it is more suitable, for the issue like this case, to require employers to assist the return to the work for workers with a long-term illness through such an adjudicative process that the court could assess actively whether the employer provided enough and affordable support to his/her workers to return to the workplace before reaching the decision of the dismissal.