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## 5. Labor/Social Security Law

### **X v. Hirao Corp.**

Supreme Court 1st P.B., April 25, 2019

Case No. (*Ju*) 1889 of 2017

1208 RODO HANREI 5

#### **Summary:**

In a case in which a partial wage payment was repeatedly delayed by successive collective agreements, and the wage claim was finally abandoned by an agreement between an employer and a labor union, the Court decided that the due date of the wage payment arrived when the purpose of the delay of wage payment had disappeared while admitting the possibility of a delay of wage payment based on a collective agreement, and the possibility of the disposing the wage claim already accrued by a labor union with special authorization by the employees.

#### **Reference:**

Article 14 and 16 of the Labor Union Act (L.U.A.)

#### **Facts:**

X was a truck driver in the concrete section of Y, a trucking company. X belongs to A (Labor Union; non-party to the litigation). Under the employment contract between X and Y, wages were closed on 20th of each month and a payment was made at the end of the month, and a bonus would be paid in July and December.

On August 28, 2013, due to the deterioration of the business situation, Y, A and its local branch B (Labor Union; non-party to the litigation) concluded, in writing, a collective agreement (hereinafter the first collective agreement), which included the following clauses: (a) A and B accept a wage cut by 20%, (b) the period of the wage cut is 12 months starting from the payment in August of the same year and subsequent treatment

should be determined based on labor-management consultation, (c) Y should confirm the total amount of the wage cut as a wage claim and mention the amount of the wage cut in a wage slip. Y payed cut wages to X in accordance with the first collective agreement from August 2013 to July 2014 (hereinafter, referred to the differences caused by the wage cut in this period as the first unpaid wages).

On September 3, 2014, due to the business situation not having improved, Y, A and B concluded, in writing, a collective agreement (hereinafter the second collective agreement), with the same conditions as the first collective agreement, except the period extended for another 12 months starting from the payment in August. Y payed cut wages to X in accordance with the second collective agreement from August 2014 to July 2015 (hereinafter, differences caused by the wage cut in this period are referred to as the second unpaid wages, and the differences caused by the first and the second wage cut are referred to as the unpaid wages).

On December 14, X brought an action for the payment of the unpaid wages.

On March 20, 2015, X retired and quitted Y.

On August 10, due to the business situation not having improved, Y, A and B concluded, in writing, a collective agreement (hereinafter the third collective agreement), with the same conditions as the first collective agreement except the period extended for another 12 months starting from the payment in August.

However, the ready-mixed concrete section of Y was closed on December 31, 2016. Y, A and B discussed the treatment of the wage claim cut by the first and the second collective agreements, and then agreed that the wage claim would be abandoned (hereinafter the final agreement).

The decision of the first instance (the decision of Kobe District Court, May 10, 2016, 1208 RODO HANREI 17) denied the claim on the ground that the due date had not yet come because the due date had been delayed by the first and the second collective agreement having a normative effect which bound X, assuming that the “wage cut” written in the collective agreements meant a delay of payment. The decision of the second instance (the decision of Osaka High Court, July 14, 2017, 1208 RODO HANREI 6) denied the claim on the ground that the claim for the unpaid wages had been extinguished by the final agreement which contained an abandonment of

the wage claim cut by the first and the second collective agreement. X made a final appeal to the Supreme Court.

**Opinion:**

*The court quashed the original judgement; partially issued its own judgement and partially remanded the case.*

1. Circumstances are required which establish that the effect of the final agreement belongs to X in order to say that the wage claim of X was abandoned. In this case, there are no such circumstances. Therefore, it is not possible to say that the wage claim of X was abandoned.

2. It is not allowed to dispose or change a wage claim substantially accrued, by the retroactive application of a collective agreement concluded *a posteriori* (see Hong Kong and Shanghai Bank case, the Supreme Court, September 7, 1989, 546 RODO HANREI 6, Asahi Fire & Marine Insurance case, the Supreme Court, August 3, 1996, 50-4 MINSHU 1008). In this case, it was not allowed to delay a payment for the wage claim already accrued before the conclusion of these collective agreements based on the first and the second collective agreement, except with a special authorization by X.

It is construed that the due date of the wages cut and delayed by the first and the second collective agreements had not arrived yet by the conclusion of the second and the third collective agreements, but that the due date would arrive if discussions were not held about the subsequent treatment of wages cut and delayed after the last due date of wage payment subjected to the third collective agreement (i.e. July, 2016) in a period normally required or when they were not able to reach an agreement in a reasonable time.

Under the facts confirmed in the original judgement, which failed to confirm the amount of the wage claim already accrued before the conclusion of the first and the second collective agreements, the existence or non-existence of a special authorization by X, or the existence or non-existence of a discussion about the subsequent treatment of the wages cut and delayed after July, 2016, among Y, A and B, it was not able to determine the due date of the payment for each unpaid wage.

However, it should have been decided that the due date of wage claim

of X arrived at the latest on the date when the ready-mixed concrete section was closed, which removed the purpose of the delay of a wage payment for those who were employed in the same section to improve the business situation.

3. It is inevitable that the original judgement be quashed in which the payment of the unpaid wages and their late charge were denied. From the above mentioned, the claim of X for the part of the capital of the unpaid wages shall be admitted.

**Editorial Note:**

1. This case is concerned with the effectiveness of the consecutive collective agreements concluded between a labor union and an employer facing a financial difficulty, which generated the effect of a delay in payment, and the effectiveness of the agreement, between a labor union and an employer, not fulfilling the conditions of a collective agreement, which contained an abandonment of wage claims of union members whose payment was delayed by the former collective agreements. In other words, this case is not concerned with the effectiveness of a disadvantageous change of a collective agreement, although the expression “wage cuts” was used in a collective agreement. Also, in this case, there is a specificity that there existed two types of wage claim at the conclusion of the collective agreements and were subject to a delay of payment, that is to say one which had been already accrued and the other not yet, because of the time lag between the closing day and the payment day.

2. In Japan, a normative effect, which fixes the working conditions of the union members, is given to a collective agreement between a labor union and an employer (or an employers' organization) when the agreement is put in writing and is either signed by or has affixed the names and seals by both of the parties concerned (Art. 14 and 16 of Labor Union Act). It is indifferent whether the content of the agreement profits the union members or not because there does not exist a so-called “principle of priority” in the legislation and a collective agreement sets, in general, the actual working conditions at the level of enterprises. However, as a limit to the autonomy of collective agreements, a normative effect of a collective

agreement will be denied if a provision of the agreement violates a mandatory statute or if it provides the things which should be disposed by each individual employee.

3. This judgement decided that the wage claim for the principal part which had been denied in the original decision should have been admitted from the viewpoint of the effectiveness of the abandonment of the wage claim by the final agreement and the arrival of due date. However, this judgement decided that it was unable to determine the due date for each unpaid wage to calculate a late charge from the facts confirmed in the original judgement, and, then, remanded the case.

Firstly, concerning the abandonment of the wage claim by an agreement between a labor union and an employer, not fulfilling the condition to be a collective agreement in L.U.A., this judgment requires circumstances which ground that the effect of the final agreement belongs to X in order to say that wage claim of X was abandoned, so that it would leave room for an abandonment by a collective agreement. As mentioned above, this decision was not concerned with the normative effect of a collective agreement but the legitimacy of a proxy by the A Union on behalf of X. However, this decision did not reach to show concrete indications in which case there was such a consent from a union member to a union.

Secondly, concerning the delay of a wage payment by a collective agreement, this judgement distinguished the wage claim which had already been accrued from that not accrued yet. Concerning the former, the Court followed the case law which did not allow the disposition of a wage claim already accrued by retroactively applying a collective agreement concluded *a posteriori*, then decided that it was not allowed to delay a wage payment by the first and the second collective agreements except with the special authorization by X. On the other hand, concerning the latter, this judgement admitted the possibility of a delay of payment by a collective agreement. It is also remarkable that the Court admitted the possibility of a further delay of payment when the grace period had arrived on condition that a new collective agreement was concluded about the subsequent treatment after the grace period in a reasonable time normally required for discussion; otherwise, the due date would arrive.

Concerning the effect of the delay of a wage payment, this judgment

decided that it removed the purpose of a delay of payment and the due date arrived at the latest when the ready-mixed concrete section was closed from the viewpoint of the purpose of a delay of wage payment. It is due to the interpretation of an agreement based on the concrete facts.

## 6. International Law and Organizations

### **Claims for revocations and rescissions of administrative determinations and requests of special permissions to stay in Japan and rescission of issuing written deportation order**

The Nagoya District Court, April 18, 2019,

Case no. (*gyo u*) 104 of 2019

#### **Summary:**

This is a case concerning administrative determinations on the Immigration Control of an Iranian and Columbian Family (the “Plaintiffs”). The Plaintiffs A and B have their first son, who has both Iranian and Columbian nationality (Plaintiff C), their first daughter (Plaintiff D) and second son (Plaintiff E), who have Iranian nationality. An Immigration Inspector (the “Immigration Inspector”) and Supervising Immigration Inspector of the Nagoya Regional Immigration Bureau (the “Supervising Immigration Inspector”) considered them as illegal stayers under Art.24 (iv) (b), (vii) of the Immigration Control and Refugee Recognition Act. The plaintiff raised objections, however, and the Director of the Nagoya Regional Immigration Bureau (the “Director”) made administrative determinations, and the Supervising Immigration Inspector issued the written deportation orders to the Plaintiffs. These orders were issued to the Plaintiffs A, B, C in 2004, to the Plaintiff D in 2010, and the Plaintiff E in 2017. On August 6, 2004, the Plaintiffs A, B, C filed actions for revocations of the administration determinations and declarations of nullity of the written deportation orders. However, the Nagoya District Court (the “Court”) and the Nagoya High Court rejected their requests, and the Justices of the Supreme Court also did not accept their requests in 2006. Consequently, the Plaintiffs filed actions to the Justices of the Supreme