Content Analysis of Individual Labor Dispute Resolution Cases — Termination, Bullying/Harassment, Reduction in Working Conditions, and Tripartite Labor Relationships —

Summary

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Objectives of Study

The two main cornerstones of the modern labor law are the intervention into contracts by national regulations and the collective regulations of working conditions instituted by united workers. The latter system has played an especially central role in the regulation of working conditions in the advanced world as a system of collective labor relations. This has also influenced the designing of dispute resolution systems. As a result, within the framework of the labor laws of Japan which were instituted immediately after World War II, a dispute resolution system was established as a collective system, in which trade unions have almost always been one of the parties involved,. It can be said that the assumption had been that matters related to individual workers would also be dealt with within the collective framework to be resolved. However, as the unionization rate decreased from 55.8% immediately after World War II to 18.5% in 2009, the number of workers who are not organized by trade unions has increased. This trend applies particularly to small- and medium-sized companies with less than 100 employees, where the unionization rate is as low as 1.1%. Moreover, under the Japanese practice of having enterprise-based unions in which non-regular employees are not considered members, the number of non-regular employees who are not organized by trade unions has increased even at companies with trade unions.

Against such a backdrop, the establishment of a system to treat individual labor disputes has become a major policy challenge since the 1990s. Civil disputes can of

course be brought to court for resolution, but since the process is time-consuming and costly, it has been extremely difficult for many workers to actually do so. After various discussions, the Act on Promoting the Resolution of Individual Labor Disputes was put into force in October 2001, and Prefectural Labor Bureaus across Japan have been providing consultations, advice/guidance, and conciliation regarding individual labor disputes. In FY2009, the labor bureaus dealt with a very large number of cases: 1,141,006 cases of overall labor consultations, 247,302 cases of individual civil labor dispute consultations, 7,778 applications for advice/guidance received, and 7,821 cases of accepted applications for conciliation. In a sense, it can be said that these figures reflect the reality of individual labor disputes in the current Japanese labor society to a considerable degree.

However, regarding the details of individual dispute resolution, the only available information is general statistical data made public annually by the Ministry of Health, Labour and Welfare (MHLW) as the Status of Implementation of Individual Labor Dispute Resolutions Systems, and the concrete details of the disputes and dispute resolution have not been revealed.. Some of the cases that have been considered to be typical examples have been introduced, but the entire picture has not been made clear.

In addition, with the growing interest in labor issues in recent years, many books written by journalists revealing the reality of the workplace have been published, which include the actual cases of individual labor disputes. But all of them are mere episode-like stories, and it is hard to say that they are indicative of the overall picture of disputes arising in today's workplaces.

We therefore decided to conduct a comprehensive analysis of individual labor-dispute resolution cases handled by the labor bureaus. Our aim was to clarify the overall picture of the circumstances of disputes that actually arise in the workplace in the current Japanese working society and how these disputes are treated by conducting a statistical content analysis.

Furthermore, cases of termination of employment due to dismissals and other reasons, which account for the majority of individual labor disputes; cases of bullying and harassment; cases of disadvantageous changes in working conditions; and cases related to tripartite working relationships, such as the dispatching of workers, are becoming major challenges in today's labor law policy that are attracting attention. It can be construed that revealing the realities of working society will provide extremely beneficial information in future policy discussions in such fields.

Method of Research

With the above-mentioned objectives, we received records of advice/ guidance and conciliation provided in FY 2008 by four labor bureaus out of the 47 Prefectural Labor Bureaus across Japan, for this research. The records were provided by the Labor Dispute Settlement Office of the Regional Bureau Administration Division of the Minister's Secretariat of the MHLW, after the deletion of personal information of the involved parties.

Since an extremely large amount of records and information were found in the cases of conciliation in comparison with cases of advice/guidance, we decided to mainly deal with cases of conciliation, and use the cases of advice/guidance only where necessary in this research.

The number of cases of conciliation that were surveyed in this research was 1,144, which accounts for approximately 13.5% of the 8,457 applications for conciliation accepted across the country during the same period.

In this research, we classified the contents of the 1,144 applications into the following three categories: disputes related to the termination of employment due to dismissal and other reasons, disputes related to bullying and harassment, and disputes related to disadvantageous changes in working conditions. Furthermore, regardless of the content of the applications, we extracted cases of disputes under tripartite working relationships including such formats as the dispatch of workers and subcontracting. We then conducted an analysis of the cases of each category as described in each chapter.

In conducting the analysis, we considered information other than the personal information of the people involved, which was deleted, such as the sex of the worker, employment status, company size, and the existence or nonexistence of a trade union.

Overview of Report

1. Overview of Cases of Conciliation of Individual Labor Disputes (Quantitative Analysis)

The number of cases of conciliation provided by the four labor bureaus in FY 2008 was 1,144. Looking at the employment status, 51.0% were regular workers, 30.2% were directly hired non-regular workers, 11.5% were dispatched workers, and 6.6% were workers during the probationary period. As for company size, small- and medium-sized companies accounted for the majority, with companies with less than 100 employees accounting for 58.2% of the total.

Looking at the content of applications by classifying them into categories that are addressed in the chapters of this report, "termination of employment" accounted for

66.1%, or nearly two-thirds of the total, followed by "bullying/harassment" and "reduction in working conditions" accounting for 22.7% and 11.2%, respectively. There is some overlap of applications among those categories.

Looking at how the cases were concluded, 30.2% were concluded by "an agreement being reached," 8.5% by "the case being dropped, and others," 42.7% by "the case being discontinued due to the nonparticipation of the respondent party," and 18.4% by "agreement not being reached."

Regarding the number of days required for conciliation, in the cases that were discontinued due to the nonparticipation of the respondent party, it usually took 30 days or less. Even in cases where agreement was reached or not reached, in most instances it took 31 to 60 days to reach conclusions.

When the requested amount of money was less than 400,000 yen, agreement was reached in more than 40% of cases, but this percentage gradually decreased when the requested amount rose above 400,000 yen. Additionally, regular employees requested a relatively large amount of money, while the amount requested was relatively low for directly hired non-regular workers and dispatched workers.

As for the amount of settlement money, the amount for regular employees was concentrated in the range from 100,000 yen to less than 400,000 yen, and there were also cases where relatively large amounts of money were received. On the other hand, regarding directly hired non-regular workers and dispatched workers, the amount of settlement money was below 100,000 yen in more than 30% of cases, which shows that the disputes were settled at a lower amount of money in comparison with regular employees.

In general, the amount of settlement money was lower than the requested amount, but in some cases a relatively large amount of settlement money was received.

2. Analysis of Cases of Termination of Employment

In Chapter 2, the categories of reasons for the termination of employment derived inductively from individual cases were used for separate analysis from the types of termination of employment recorded by the labor bureaus (ordinary dismissal, collective redundancy, disciplinary dismissal, suggestion of termination, withdrawal of tentative hiring decision, refusal to renew repeatedly renewed fixed-term contract, resignation for personal reasons, mandatory retirement age, etc.). This is because there are an extremely large number of cases that are categorized as ordinal dismissals and not as collective redundancies, even though the content of the applications indicate that they are dismissals for managerial reasons, or cases that are categorized as ordinary

dismissals and not as disciplinary dismissals even though they are dismissals resulting from misconduct. Furthermore, very delicate distinction is required to determine whether a case is a dismissal, suggestion of termination, or resignation for personal reasons, which is influenced by how the meaning of specific remarks of the employer and the worker are interpreted. Moreover, there are quite a few cases where the very question of which category the case in question falls under is the point of controversy.

The specific categories that we used are as follows: (i) sanction against legitimate exercise of rights under the labor laws; (ii) sanction against the voicing of opinions by the worker (opinions of protest, social justice, opinions on corporate management, and others); (iii) refusal of change in working conditions (change in working conditions involving reassignment, wage, and others, change in status in employment); (iv) notice of change or termination (employment terminated after the proposal of a choice between a disadvantageous change and the termination of employment); (v) attitude (refusal to follow instructions at work, poor attitude in performing the work, trouble at the workplace, trouble with customers, tardiness and absence, leave, complaints, compatibility, and others); (vi) misconduct (breach of trust, work-related accidents, monetary trouble at work, theft at the workplace, violence at the workplace, bullying and sexual harassment, impropriety at work, fraud in the application for employment); (vii) problems in private life; (viii) side business; (ix) competence (specific lack of skill for individual job, poor performance, mistakes at work, general lack of ability, ineptitude); (x) illness/injury (industrial accident, private injury, chronic disease, mental disease, poor physical conditions, illness of family members); (xi) disability; (xii) age; (xiii) racial discrimination; (xiv) managerial reason; (xv) dispute over employment status; (xvi) quasi-dismissal (voluntary retirement in form, but actually a case where the worker was forced to resign by the actions of the employer) (bullying/harassment, change in working conditions, trouble at the workplace, and others); (xvii) inadequate communication; (xviii) trouble over resignation; and (xix) reason unknown. We classified all of the 756 cases related to the termination of employment into the categories described above, and analyzed the tendencies observed in the cases.

The category “managerial reason” had the largest number of cases, or 218 cases, but they include quite a few cases for which applications that are of the same content were submitted almost simultaneously from workers working for the same companies. If those cases are discounted, the actual number of cases falling under this category is 144, which is slightly lower than the number of cases of termination of employment citing “attitude” as the reason, which is 167.

Out of the cases of termination of employment based on the actions or attributes of individual workers, as can be seen from the above-listed categories, there are a large number of cases of termination of employment with "attitude" being cited as the reason, or 167 cases, followed by 70 cases of termination of employment due to "competence," 48 cases due to "illness," and 39 cases due to "misconduct."

Looking deeper into the content of cases of employment termination resulting from "attitude" or "competence," there are not many cases where employment was terminated due to specific refusal of work orders or insufficient job competence. In the "attitude" category, there are many cases where "trouble at the workplace" or "trouble with customers" were given as the reason, and in the "competence" category, there are a large number of cases with "insufficient competence in general" cited as the reason, without any reference to specific competence, mistakes, or insufficient achievements. Moreover, there are quite a few cases of termination of employment due to abstract and ambiguous reasons such as "compatibility" in the "attitude" category, and "ineptitude" in the "competence" category.

On the other hand, there are quite a few cases related to changes in working conditions, such as the termination of employment or notification of a contractual change, caused by a refusal of a change in working conditions. Furthermore, there are a considerable number of cases of termination of employment that seem to be lacking objective rationality for which "exercise of rights under the labor laws" or other opinions were given as the reason.

3. Circumstances of Bullying/Harassment as Seen in the Cases of Conciliation by Labor Bureaus

In Chapter 3, the circumstances of 260 disputes concerning bullying were analyzed from the following perspectives. As for the parties involved in the bullying, when seen with a focus on the perpetrator of bullying, (i) 44.4% are bullying by the supervisor; (ii) 27.1% are bullying by a senior worker or coworker; and (iii) 17.9% are bullying by a managing directors such as the chairman or president. When seen with a focus on the victim of bullying, (i) cases of bullying of women accounts for the majority at 54.6% (there are an especially large number of cases of bullying of single mothers or divorced women); (ii) the rate of complaints from non-regular workers, especially from dispatched workers, is higher than the overall rate of complaints; and (iii) there are quite a few cases of bullying of people with disabilities.

In terms of the description of the acts of bullying, the cases involve the following: (i) acts that cause physical harm (violence, injury, etc.); (ii) acts that cause mental distress

(verbal abuse, abusive language, derogatory remarks, discrimination, prejudice, invasion of privacy, ignoring people, etc.); and (iii) acts that cause social anguish (exclusion from work, etc). On the other hand, applications were also received for the conciliation of trivial acts that are difficult to regard as bullying from an objective point of view.

In many cases, the victims of bullying first talked to their supervisors or companies, but most of these talks failed. There are few cases where trade unions are present, but the problems are often not solved even if there are trade unions present, although perhaps this represents the very reason that applications for conciliation were filed to the labor bureaus.

Looking at the impact of bullying on the victim, the most significant impact was that on mental health, and in approximately 30% of cases the victims were diagnosed as having some mental problems, or they complained of having such problems. This explains the intention of the victims to reach a resolution swiftly through the system of conciliation, and not through lawsuits, which are time-consuming, to move on with their lives. There were also many cases where there was significant impact on employment, such as cases where the victim was forced to resign after being bullied, or the victim was dismissed (employment being discontinued) because the victim had consulted someone about the bullying.

Out of the cases of bullying, cases where monetary compensation was requested accounts for the majority at 77.7%, but there are also quite a few cases requesting apologies, retractions, or the discontinuation of actions. However, in most cases where an agreement was reached, it was an agreement to pay compensation, and even in cases where victims requested apologies etc., employers rarely admitted to the existence of bullying.

4. Reduction in Working Conditions

In Chapter 4, with a focus on the reasons for the occurrence of disputes over reduction in working conditions, 128 applications for conciliation were classified into the following 17 categories: (i) reduction in wage due to change in job type, reassignment, or temporary transfer; (ii) reduction in wage due to decreased working hours (days); (iii) reduction in wage due to financial difficulty of company; (iv) reduction in wage due to job performance review; (v) wage differing from the promised wage at the time of joining the company; (vi) reduction in wage due to change in employment status; (vii) reduction in wage due to change in wage system; (viii) reduction in wage due to demotion; (ix) reduction in or non-payment of bonus; (x) non-payment of

commission-based wage; (xi) reduction in allowance; (xii) reduction in wages of other kinds; (xiii) non-payment or reduction in retirement benefit in the case of dismissal; (xiv) reduction in retirement benefit based on job performance review; (xv) reduction in or non-payment of retirement benefit due to financial difficulty of company; (xvi) reduction in retirement benefit due to other reasons; and (xvii) reduction in working conditions of other kinds.

Out of those cases, there were 34 cases where an agreement was reached. We classified those cases into the following six categories for analysis: (i) cases where the decision to lower working conditions was retracted, and the worker continued to work; (ii) cases where the worker wanted to continue working, but resigned after receiving the settlement money; (iii) cases where the worker did not want to continue working, and resigned after receiving the settlement money; (iv); cases where the worker filed an application for conciliation after resignation, and received the settlement money; (v) cases where the decision of nonpayment or reduction in retirement benefit was overturned and the worker received the settlement money; and (vi) cases where the worker did not receive the settlement money and resigned.

Moreover, of these 34 cases, there were four cases where the decision to lower working conditions was retracted and the worker continued to work. We provided a detailed explanation of those cases with a focus on the processes of the occurrence and resolution of disputes, and finally described the challenges of personnel management.

5. Individual Labor Disputes in Tripartite Labor Relationships

In Chapter 5, we analyzed the five types of cases of tripartite labor relationships not limited to the dispatch of workers, but also covering other working statuses; namely subcontracting, job placement, independent contracting, and others. The total number of those cases was 270, which accounts for roughly one-fourth of the total. Of those, 48.9% were cases of dispatch of workers, and 40.4% were cases of subcontracting (workers working for subcontracting companies).

In comparison with the ratio of dispatched workers to the overall labor population, a larger number of disputes have actually arisen in the tripartite labor relationship, and it is considered that this fact is reflected in the cases of disputes referred to conciliation. In cases of tripartite labor relationships, there is a high rate of agreements being reached, and the rate of discontinuation due to the nonparticipation of the respondent party is low. It can thus be concluded that employers are also in favor of resolution by conciliation. However, as is the case with directly hired non-regular workers, the amount of settlement money tends to be low.

As for cases of termination of employment, there is a risk that the worker in the tripartite labor relationship would lose their job according to the business situation of the party receiving the labor service, and it cannot be denied that in a way, the worker is unreasonably placed in an unstable position with regard to employment. Moreover, especially in the case of dispatched workers registered at dispatching companies, there are many instances where disputes occur over the issue of termination of employment itself and also the introduction of a subsequent new workplace to which the worker is to be dispatched.

Furthermore, dispatched workers tend to be involved in disputes over work environment centering on bullying/harassment more often than workers of other employment status. Regarding this particular instance, there are quite a few cases where applications are filed for conciliation with the client companies that accept dispatched workers, while in other cases of conciliation related to dispatched workers, most of the applications are filed for conciliation with the companies that dispatch the workers. It is considered that this is because dispatched workers recognize that the companies to which they are dispatched should bear a certain degree of responsibility for their working conditions, and also because in the cases of disputes over the work environment of dispatched workers, problems are often found in the way workplaces are managed by client companies. This issue poses a big challenge to such companies.