

JAPAN LABOR BULLETIN

ISSUED BY THE JAPAN INSTITUTE OF LABOUR

Vol.31 - No.05

May 1992

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General Survey

Slowdown in Economic Growth

At a February 25 Cabinet meeting, Director-General Takeshi Noda of the Economic Planning Agency (EPA) submitted the monthly economic report for February. The report says "The Japanese economy is continuing to slow and is in a phase of adjustment before moving toward a course of sustainable noninflationary growth." In past monthly reports, no mentioning of the term "expansion" meant a slowing economy. Thus, in February the government practically admitted that the nation's economy has slowed.

The economic expansion which began in December 1986 peaked between January and March 1991 and thereafter entered a slowdown phase. In August 1991 the nation expected that the prolonged period of economic growth had equaled that of the "Izanagi" boom, a postwar record with 57 straight months of growth. However, as the economy had entered the 52th month of growth in March 1991, it did not after all equal the Izanagi boom. One contributing factor behind the conclusion that expansion of the economy peaked in the January-March period of 1991 is an indicator for judging future business trends, also a key gauge for judging cyclical turning points of the nation's economy. The indicator suggests "economic slowdown" when it falls below 50 percent. Since April 1991 many months have witnessed a drop below 50 percent figure and by October this index tumbled to 0 percent. What is more, real growth in Gross Domestic Product (GDP) slid to 1.0 percent in the April-June 1991 period from 1.6 percent in the January-March 1991 period. The figure further dropped to 0.3 percent in the July-September period, falling below 1 percent.

The foremost feature which makes the current economic downturn different from slowdowns in past economic cycles is continued tight supply-demand conditions in the labor market. Some smaller firms in particular are actively increasing the number of new recruits, judging that "now is the time for securing people when big businesses are slightly cautious about hiring new recruits because of the faltering economy." The prevailing view is that this favorable employment environment is one cause of continued firm personal spending.

In the wake of such business conditions, following a regular Cabinet meeting to review an economic report, calls for government measures to prop up the slowing economy have been raised among many quarters.

On April 1, the Bank of Japan responded to this call by making the fourth official discount rate cut.

Working Conditions and the Labor Market

Auto and Electrical-Machinery Industries Set to Strongly Tackle Shorter Hours

In the wake of the slower tempo at which Japan reduces working hours, vigorous moves to actively tackle the issue of reducing working hours are emerging in the auto and electrical-machinery sectors.

On February 20, Japan Automobile Association (JAA) and Jidoshasoren (Confederation of Japan Automobile Workers' Unions) gathered for their regular meeting. Yutaka Kume, JAA chairman and president of Nissan Motor Co. unveiled in a statement during the meeting that JAA will launch a study group to evaluate the issue of shorter work hours. The auto industry is tardy in shortening work hours as compared with other major industries, such as the steel industry. Auto workers put in total annual hours of 2,247 (1990) and have a long way to go to achieve the 1,800 hour government goal in 1992. Furthermore, with Japan's carmakers predicted to run up against the labor shortage, Chairman Kume expressed the view that he will tackle the way the auto industry should be as well as the way reduction of work hours will be promoted, pointing out the "need to go farther into industrial structure for a comprehensive study of shorter hours." He thus responded to a recommendation, made on February 15 by Jidoshasoren, that fewer hours be promoted.

In its recommendation, Jidoshasoren said: "The auto industry is presently confronted by the triple problems of long working hours, low profitability and trade friction. In the years ahead, the industry must curtail its excessive competition, achieve such structural changes as cuts in the number of domestically produced cars and an increase in car prices to realize total annual work hours of 1800." Agreeing on this, Chairman Kume noted that management will study promotion of shorter hours.

Meanwhile, on February 28, Matsushita Electric Industrial Co. disclosed its concrete measures to achieve the 1800 work hours goal in 1993, which consists of six pillars. These are : reduction of scheduled work hours, an increase in annual paid holidays, a cut in overtime hours, introduction of a long vacation, the care-leave system and the volunteer work-leave scheme. Full implementation of these measures will lead to realization of shortening work hours to 1800 from 2,036 in 1990. These measures were worked out in a final recommendation made by the Comfort Creation Committee organized by both labor and management.

Labor-Management Relations

1992 *Shunto* Peaks-Wage Hikes are Extremely Unsatisfactory, Unions Say

The possibility is high in the 1992 *shunto*, or spring labor offensive, that unions in major metal industries, such as the auto industry, will accept management's offer of wage increases of 0.7-0.8 percent less than last year's settlement. Thus, the average wage increase rate will be around the 4 percent level. In 1991 the increase rate was 5.65 percent according to Ministry of Labour compilations. On the other hand, shortening of work hours progressed steadily as Matsushita, one of Japan's largest electrical-machinery makers, decided on a program calling for the "realization of the 1800 work hours goal in fiscal 1993."

This year's *shunto* was a difficult one for labor since pace-setting companies of the electrical machinery, automobile and steel industries reported drops in profits of more than 30 percent from the year before. Whereas labor unions demanded a wage hike of around 8 percent, management, in the electrical-machinery industry, insisted that wage hikes be held down to a low level of around 3 percent because of declining corporate earnings and uncertainty in business prospects. At the weekend preceding March 25, the date for reply, labor unions demanded a minimum 5 percent wage raise, while management stuck to the 4.5 percent mark. It is highly likely that labor unions in the electrical-machinery sector in particular, in which management has taken a tough stance toward wage hikes, will head off a strike for the first time in 12 years since 1980.

In the end, both labor and management agreed to meet halfway. Unions at 16 major electrical-machinery companies agreed on a wage increase of 4.7 percent, 0.5 percent lower than last year's settlement; those at 11 major auto companies accepted an average 4.87 percent wage hike, down 0.72 percent from last year; and those at five major steel companies took an offer of a wage raise of 3.63 percent, down 1.7 percent from the year before. Following unions in the metal industries, electric power and private railway company unions as well as Nippon Telegraph and Telephone Corp's labor union, which took management's offer in March, accepted a wage increase 0.4-1 percent lower than a year earlier. Wage negotiations at smaller-scale firms will continue until the end of April, and it appears certain that the overall wage hike will average less than 5 percent, based upon the results of wage negotiation settlements in March, at major unions.

Reduction of working hours has been an important *shunto* issue in the past few years. In 1991 the average Japanese worker put in 2,016 hours, far more than his or her U.S. and West European counterpart. This year steelmakers again offered 2-3 extra scheduled paid holidays, approaching goals of "1800 work hours in the mid 1990's" set by both labor and management. In the electrical-machinery sector Matsushita's labor and management agreed on a shorter

hours program calling for the realization of 1800 hours in 1993. Toyota Motor Corp. and Nissan, Japan's major carmakers, confirmed that they will realize "1800 hours in 1995."

Moreover, in a bid to trim overtime which is regarded as one of the causes of long working hours, (an average of 175 hours in 1991), unions at major metal companies demanded an increased overtime pay premium for work on weekdays to 35 percent, that for work on holidays and midnight work to 45 percent.

This compares with the current 30% premium for work on weekdays and 30-40% for work on holidays and midnight work). However, workers in electrical-machinery industries alone won a 45 percent overtime pay rate for work on holidays.

Public Policy

Ministry of Labour Publishes Names of 4 Firms Employing Fewer Disabled Persons

On March 10, the Ministry of Labour released names of companies which have poorly failed to attain the legally prescribed employment quota of disabled persons. The Ministry has been promoting expanded employment of disabled people. Making a list of those firms which failed to attain the legally set employment quota in 1991 for special guidance, the Ministry decided to take "sanctions" against four firms which failed to attain even 0.8 percent, or half of the 1.6 percent legally prescribed quota. This is the first such attempt to publish names of companies since the enforcement in 1985 of the Law for Employment Promotion of the Disabled.

Under the Law, employers of private firms with a workforce of 63 workers or more must hire a number of disabled persons greater than 1.6 percent of all employees.

In 1987, the Ministry called on 453 corporations to promote employment of disabled persons as they had attained a ratio of less than 0.8 percent, or half of the 1.6 percent legally prescribed quota, asking them to draw up plans to employ disabled persons.

Because of the notable delayed in improvement in the situation even after a planned period of three years elapsed, in the spring of 1991 the Ministry made a list of 113 companies with ratios of less than 0.8 percent and decided to give guidance on condition that it will release their names unless they improve the situation by the end of November. As a result, out of 113 firms listed, 36 attained the legally set employment quota and 73 employed disabled persons which represented over 0.8 percent of total employees. Thus, more than 90

percent of corporations made progress in the employment of disabled people. The average rate of employment for 113 firms rose to 1.29 percent in 1991 from 0.29 percent in 1987.

On the other hand, the employment rate for four firms whose names were made public ranged from 0.5 percent to 0.61 percent. It rose from an average of 0.08 percent in 1987 to 0.57 percent in 1991, but did not reach the targeted 0.8 percent. Thus, on March 9 the Ministry notified four companies that it would publish their names, concluding that they "failed to make certain efforts for improvement though they were aware of the Ministry's guidance and intention to disclose the names of those firms which fail to attain the legally prescribed employment quota of disabled persons."

Special Topic

The Supreme Court's Hitachi Decision on the Duty to Work Overtime

Introduction

On November 28, 1991, the Supreme Court rendered a decision affirming the validity of a disciplinary discharge implemented by the *Hitachi* Manufacturing Company against its worker who had declined a request to work overtime, made by his supervisor. This decision^[1] has received considerable publicity both domestically^[2] and internationally^[3]. This is because this decision appears to provide a legal foundation endowing strong power to management while neglecting the workers' aspiration of reducing overtime work that is prevalent in Japanese industries. This paper is an effort to clarify the significance of the judgment in relation to the issues of management prerogatives and overtime work in the Japanese employment system.

I. Contents of the Hitachi Judgment

(1) **Facts of the Case:** The appellant was employed by the *Musashi* plant of *Hitachi* Manufacturing Company and belonged to the section controlling the quality of germanium transistors manufactured there. One of the jobs of the appellant was the estimation of yield rates (the ratio of non-defective products) of transistors, upon which production plans were based.

On September 4, 1967, the appellant reported his estimation of the transistor yield rate for the month of September. However, his supervisor found that the appellant had skipped two of the three estimation steps which were required to reach the final results. At around 4:30 PM the supervisor reproached the appellant for his negligent work and directed him to carry out a re-estimation within the day, thus requiring overtime work. The appellant refused

to comply with the supervisor's direction, contending that overtime work should be completely voluntary and that he had an appointment to see a friend that evening. The appellant quit work on time that day and completed the re-estimation the next day.

The work rules of the *Musashi* plant prescribed that the company could extend the daily working time beyond the regular working time in accordance with the agreement with the *Musashi* Plant Labor Union. There was a written agreement between the company and the above-mentioned union, which stipulated that "the company may extend the working time beyond the daily schedule (a) when the extension was required due to great necessity for meeting the requirements of an order, (b) . . . , (c) . . . , (d) . . . , (e) when it is necessary to attain production goals, (f) when the extension is required by the special nature of the work, and (g) when there is a reason similar to (a) through (f)." The agreement also stated that the extended hours must not exceed 40 hours per month but this limit could be exceeded in an emergency situation within a further limit agreed upon by the parties during the previous month. The agreement was submitted to the competent Labor Inspection Office pursuant to Article 36 of the Labor Standards Law.

The company sought, through the section chief, to obtain a pledge to comply with the request of overtime work from the appellant, but he firmly maintained the voluntariness of the work. The company thus suspended his employment for 14 days due to his insubordination. At the expiration of this suspension, the supervisors interviewed the appellant several times in efforts to persuade him to correct his problem of insubordination. But the appellant strongly argued his position, thus causing further troubles with his supervisors ^[4]. The company then subjected the appellant to a disciplinary discharge, after having conferred with the above-mentioned union ^[5].

Before the above-described dispute with the company, the appellant had been subjected to disciplinary measures three times. In January 1965, he was suspended from employment for five days for having scribbled political slogans on the wall of a toilet in the plant. In March 1965, he was reprimanded for having solicited fellow workers to vote for a political party, for 20 minutes during working hours. In July 1965, he was suspended from employment for 7 days for having left his work to attend a union meeting without his supervisor's permission. In deciding upon a disciplinary discharge against the appellant, the company thus applied the provision in the work rules that it could effect such a discharge against an employee who had been subjected to disciplinary measures several times and there was no hope of improvement in his or her behavior.

The appellant first sought temporary relief from the court by using a provisional disposition procedure. The Tokyo District Court, Hachioji Branch, rejected the appellant's

claims ^[6], but the Tokyo High Court reversed this decision and temporarily confirmed the appellant's employment status ^[7]. The litigation then moved to a formal civil procedure, in which the above Hachioji Branch granted the appellant's claims by confirming the appellant's employment status and ordering the company to pay back-wages ^[8]. This decision was overturned by the Tokyo High Court ^[9]. The appellant made a final appeal to the Supreme Court, which was dismissed by its First Petty Bench.

(2) **Judgment of the Supreme Court:** At the time of this case, Article 32 of the Labor Standards Law had set the maximum working hours as eight hours per day and 48 hours per week with criminal sanctions for violations. Yet Article 36 of the Law also provided that the employer could extend working hours beyond the maximum prescribed by Article 32 under the following conditions. When the employer had concluded a written agreement with a labor union organizing a majority of employees or, if such a union does not exist, a representative of a majority of employees in the undertaking prescribing the limits and reasons for the extension, providing that a copy of the agreement (known as an "Article 36 agreement") had been submitted to a competent Labor Inspection Office. In the *Hitachi* judgment, the Supreme Court first held that when the employer had concluded and submitted an Article 36 agreement and when there was a provision in the work rules of the undertaking that the employer could request overtime work within the limits set forth in the above stated agreement, employees had a duty to comply with the request based on such a provision. This was because, according to the judgment, such a provision of the work rules was integrated into employees' labor contracts so long as the content of the provision was reasonable.

Starting with such a proposition, the Court found that the overtime provision in the company's work rules had entrusted determination of the limits of overtime work to the Article 36 agreement between the company and the majority union. The Court judged that although the agreement contained somewhat general stipulations of reasons for overtime work, the content of the overtime provision integrating such an agreement could, in its entirety, be regarded as reasonable in light of the company's need to accommodate the production plan in response to the fluctuations in demand, etc.

The Court thus concluded that the company had been authorized to request overtime work of the appellant if any the conditions set forth in the work rules had been satisfied. The Court judged that the direction given by the supervisor to the appellant had fallen under (e) through (g) of the reasons for overtime work and that the appellant had accordingly been obligated to comply with the request. The Court further stated that in light of all the circumstances of this case, including the fact that the overtime work had been requested in order to correct the appellant's negligent estimation of yield rates, the disciplinary discharge could not be regarded as constituting an abuse of the employer's disciplinary right.

II. Did the Judgment Give Too Much Power to Management?

(1) **Flexible Regulation of Overtime-work and the Issue of the Duty to Work Overtime** : As was described above, the Labor Standards Law permits work in excess of the maximum working hours rather flexibly. The employer may engage workers in overtime hours if they conclude a written agreement with a majority union or a representative of a majority of workers in the undertaking, stipulating the reasons and limits of overtime work and providing that the agreement is submitted to the Labour Standards Inspection Office. Employers were also required by Article 37 of the Law to pay premiums for overtime hours of 25 percent or more of normal hourly wages.

In the ordinary setting of union management relations, enterprise unions had not fiercely resisted employers' requests for overtime agreements since overtime work was one of the principal methods of employment adjustment under the long-term employment system. Furthermore, employees tended to value overtime premiums. Also, in undertakings where there was no major union, the employee representation system guaranteed by the Law had not worked toward restricting overtime work. An employee representative was usually chosen in a casual way and he or she tended to act as a rubber stamp for the agreement prepared by the employer.

Under such relaxed regulation of overtime work, there had been a widely disputed issue of whether or not a worker had the duty to perform overtime work requested by his or her supervisor within the limits stipulated by an Article 36 agreement. Regarding this issue, there had been three major theories among legal scholars based upon differing lower court precedents. The first is a "general consent theory" which maintains that when collective agreements or work rules^[10] clearly provide that such work can be ordered when needed by the business, such a provision establishes a duty in labor contracts to comply with such an order. Firmly opposed to this first is an "individual consent theory" which holds that the duty to work overtime does not come into being even when prescribed by a collective agreement or work rules, but occurs only upon an individual worker's consent to the request for specific overtime work. The third theory is intermediate between the two, contending that the employer's authority to direct overtime work can be created only when a collective agreement or work rules define the causes for such work very specifically.

In the *Hitachi* case, the appellant based his position on the "individual consent theory" from the beginning of the dispute. Although none of the instances in this case supported his position, the initial decision of the formal civil procedure adopted the intermediate theory and found that the reasons for overtime work in the Article 36 agreement (which were integrated into the work rules) did not satisfy the specificity requirement. However, the Supreme Court

basically relied on the "general consent theory," although requiring reasonableness in the content of overtime-work provision of work rules.

(2) **The Criticism of Unfair Balance of Power:** Such being the theoretical significance of the judgment, it has met strong reaction from commentators. Their major criticism is that the judgment gave too much power to management at the sacrifice of employee interests. Such criticism was amplified due to the misleading report that the judgment supported the employer's action of disciplinary discharge by the reason of a mere refusal of overtime work [11].

In the general practice of personnel management in Japanese enterprises, employers do not readily take the action of disciplinary discharge since it is considered to be an extreme means of discipline. Managers will usually deal with employee insubordination stemming from refusal to perform overtime work with a formal or informal reprimand or other lighter means of discipline if the employee admits his fault and pledges to change his attitude in the future.

In this case, the appellant's refusal of overtime work was punished by 14 days' suspension of employment. This being instituted because the need for overtime was caused by the appellant's negligent work. In addition, the appellant did not admit his fault in addition to not complying with the over-time request. After this suspension, the appellant continued to deny management's prerogative regarding overtime work and caused troubles with management by his defiant attitude in arguments with supervisors, which, together with his disciplinary record, caused the company to execute the disciplinary discharge. In the author's view, therefore, the crux of this litigation lay in the issue of whether or not the employer could take disciplinary action against an employee who continued to challenge the management prerogative on overtime direction, for the denial of which he had already been punished. The author is inclined to negate the validity of such disciplinary action because of the double jeopardy it incurs.

(3) **Checks to Abuse of Right Principles:** Setting aside this point, the "general consent theory" is not as harsh for employees as it appears to be. The advocates of this theory maintain that where a worker cannot perform overtime work because of unavoidable reasons, the order should not be binding as constituting an abuse of the employer's direction right. In practice, supervisors usually let workers leave the workplace if the latter plead such persuasive reasons. Even if such reasons did not exist and the worker's duty to comply with the overtime direction is affirmed in theory, there is another severe check of the employer's prerogatives. As is the case with dismissals, it has been an established principle in case law that a disciplinary discharge or other means of disciplinary punishment is invalid if it is

regarded as excessively severe when various circumstances concerning the disciplined worker and his acts are taken into consideration. Even while confirming that the employer had a reason to discipline, the courts have thus invalidated numerous disciplinary punishments (especially disciplinary discharges) as being excessive and, therefore, constituting an abuse of the right to exact discipline.

In the author's view, this case required a difficult judgment on this point as is shown by the fact that the Tokyo High Court found an abuse of the disciplinary right in the second instance of the provisional disposition procedure. The Supreme Court denied that this action was an abuse by attaching importance to the appellant's negligent work which gave rise to the supervisor's overtime request and the appellant's unrepentant attitude thereafter. The Supreme Court's conclusion seems to better reflect the moral of workplaces under the long-term employment system, although many academics would conclude differently.

III. Does the Judgment Hinder the Movement toward Reduction in Working Time?

(1) **The Trend toward Reduction in Working Time and the Hitachi Judgment:** Another type of criticism commonly found in the comments on the decision is that by supporting required overtime work it ran counter to the movement for reduction in working time which is now taking place in Japanese society.

Since fiscal 1988, the government has been implementing a five-year program aimed at reducing average annual 'actual working hours' per worker from the level of 2,100 hours to that of 1,800 hours. To achieve this goal, the weekly maximum working time in the Labor Standards Law has been reduced from 48 to 46 hours from April 1988, and then to 44 hours from April 1991. It is already announced in the Law that the weekly maximum will be reduced to 40 hours in the near future ^[12]. Along with enforcement of the new limits, the government has been implementing a variety of measures aimed at creating a general environment conducive to shortening working time, with the cooperation of labor and management in the relevant industries. Among these measures are the realization of the five-day weekly operation system among banks and other financial institutions; the implementation of the five weekly operation-day system in governmental offices; calls for the reconsideration of business practices that make reduction in working time difficult^[13], etc.

As an important practical factor, also, a serious labor shortage developed in the latest economic boom period. Future projections of its continuation made business owners and managers realize that a reduction in working hours or an increase in rest days was an essential condition for securing the necessary human resources, especially younger workers with more individualistic views. As a result of these moves, working hours have been decreasing steadily. The average annual 'actual working hours' had been 2,111 in 1988, but

became 2,016 in 1991 (a 95-hour decrease over three years). Many business and union leaders as well as academic experts now predict that with progress in this pace the government's goal of 1,800 hours would be attained by 2000.

(2) **The Difficulty with Reducing Overtime Hours:** The tendency toward reduction in working time manifested in the above statistics has been mainly brought about by the reduction in regular weekly working hours and the increase weekly rest days. The average annual 'regular working hours' has thus been reduced from 1,923 to 1,841 during the period from 1988 to 1991. This statistic signifies that of the 94 hours' reduction in the average annual 'actual working hours,' 78 hours (83 percent) are attributable to the decrease of 'regular working hours.' It also shows that Japanese workers worked, on average, 175 "overtime hours"^[14] during 1991 and these annual "overtime hours" did not decrease by more than thirteen hours over the last three years. Taking manufacturing, this annual number was greater at 220 hours. It is also believed that the length of "overtime work" is recorded in the statistics only partially since the data rather indicates reported or paid "overtime hours" while there exist a significant number of unreported and unpaid "overtime hours" particularly in the case of white collar workers (this is called "gracious overtime work").

The prevalence of "overtime work" has been an established fact since the late 1970s. The major factors have been the slimming of work forces in enterprises during the low-growth period of the late 1970s and through most of the 1980s, and the serious labor shortage which developed during the latest economic boom. Of course, the government included measures to tackle with the structural "overtime work" in the comprehensive program for achievement of the 1,800-hour goal, but such measures have so far been limited to the inducement of voluntary efforts on the part of labor and management through administrative guidance. Coupled with escalating controversies over the "karoshi" issue (death allegedly caused by overwork), the public has become keenly aware of the necessity of regulating excessive overtime practices that are harmful to workers' health and family lives.

The *Hitachi* decision was handed down precisely as these issues have come to the forefront. Thus, the decision flew in the face of the social mood as stated above and, therefore, even looked reactionary to the public. However, the decision did not involve the issue of structural overtime caused by the shortage of work force, but rather an attempt by a supervisor to require the employee to rectify highly negligent work with overtime work. The author believes that most supervisors would have reacted to such a situation in the same way, even if they believed in the necessity of reducing structural overtime work.

In terms of policies aimed at reducing structural overtime the point to be focused upon is flexible regulation of overtime work in the Labor Standards Law rather than the employers'

authority to require overtime work. Stating this in another way, if overtime work had been regulated as strictly as in some European countries with absolute maximum hours per day, week or year and with a much higher premium rates, the recognition of such an authority in work rules or collective agreements would not have raised so much controversy. This unique aspect of Japanese labor law has been widely recognized by unionists, policy makers and even management leaders. As reform steps the government is now considering improvement of administrative-guidance standards for the limits of overtime hours to be stipulated in Article 36 agreements. Also, the Central Labor Standards Council has started to deliberate on further revision of the Labor Standards Law for reduction in working hours, in which deliberation tightening of overtime regulation is certainly becoming one of the crucial issues. It is unlikely that the *Hitachi* decision will give any adverse impact on attempts to reform overtime regulation.

CONCLUSION

As was described above, the issue dealt with in the *Hitachi* decision pertains to the authority of management to maintain discipline in the workplace rather than the policy to restrain excessive overtime work. Regarding the latter issue, there is almost unanimous agreement among the government and management and labor leaders that the industries' reliance on overtime work should be drastically reconsidered. But there is also a common recognition that such a reliance is deeply rooted in industrial organizations and practices as well as employment systems either of which cannot easily be restructured. According to the most recent statistics, the average overtime-hours per worker during January of this year in manufacturing decreased by 17.8% compared to the same period of the previous year. This is mainly due to the recession affecting many industries since late last year. Such close relationship between economic fluctuations and overtime work endorses the well-known fact that overtime hours are one of the major sources of flexibility in the Japanese mode of management. This in turn points to the problem of regulation by rigid legislation.

[1] Supreme Court, First Petty Bench, Decision of November 28, 1991, *Rodo Hanrei*, No.594, p.7

[2] All the major nation-wide newspapers reported the decision in detail, with critical comments.

[3] For example, Financial Times, 29 November 1991, page one reported the decision in connection with the *karoshi* issue.

[4] Before and after the suspension the appellant turned in written statements of regret several times at the request of the company, which the company regarded as being far from sincere apologies. The appellant's adamant arguments with supervisors led to the latter's being ordered to stay at home for reflection, to which the appellant again challenged physically and verbally.

[5] The union intended to negotiate with the company for preserving the appellant's employment on the condition that the appellant admit his fault. But the appellant declined to be represented by the union. The union thus delivered its opinion to the company that it did not oppose a disciplinary measure against him.

[6] Decision of Oct.2, 1971, *Rominshu* Vol.22, No.1, p.28

[7] Decision of Jan.22, 1971, *Rominshu* Vol.22, No.1, p.17

[8] Decision of May 22, 1978, *Rodo-hanrei*, No.301. p.45

[9] Decision of March 27, 1986, *Rodo-hanrei*, No.472, p.28

[10] Work rules are the most basic document in Japanese labor relations prescribing details of working conditions and workplace discipline. The Labor Standards Law requires the employer to draw up that document and submit it to the Labor Standards Inspection Office. In doing so, the employer must seek the opinion of the majority union, or, in case such a union does not exist, a representative of the majority of employees in the undertaking. The employer must also make the content of the work rules known to his employees by posting them at a certain appropriate place in the workplace.

[11] Many of the major newspapers in Japan reported the decision in such a way. Even the Financial Times cited in note 3 did so.

[12] On the background, intent and practical effect of the phased reduction of maximum working hours by the 1987 revision of Labor Standards Law, Kazuo Sugeno, Japanese Labor Law (translated by Leo Kanowitz), Univ. of Washington Press 1992, pp.xxx

[13] For example, just-in-time delivery systems; orders by parent firms to subcontracting firms ignoring weekly rest days in these firms; excessive services to customers in department stores or delivery service industries; frequent changes of programs ordered to software firms, etc.

[14] The term "overtime hours" here means hours worked over the daily or weekly regular (or scheduled) working hours set forth in the work rules of each firm. Not all are regulated as overtime hours by the Labor Standards Law because if the daily or weekly schedules are less than the daily or weekly maximum hours on the Law the portion of "overtime hours" that do not exceed the legal maximums (e.g., an up-to one-hour extension in a day in the case of a daily schedule of seven-hour working-time) do not constitute the legal overtime hours. However, most firms do not distinguish such non-regulated overtime hours from regulated overtime hours in the conclusion of Article 36 agreements and the payment of premiums.

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Statistical Aspects

Recent Labor Economy Indices

	January 1992	December 1991	Change from previous year
Labor force	6,405 (10 thousand)	6,504 (10 thousand)	97 (10 thousand)
Employed	6,264	6,377	89
Employees	5,010	5,079	122
Unemployed	139	141 (S.A.)	8
Unemployment rate	2.1 %	2.1 % (S.A.)	0.1
Active opening rate	1.28	1.31 (S.A.)	- 0.15
Total hours worked	150.1 (hours)	169.1 (hours)	- 1.9*
Total wages of regular employees	261.0 (¥thousand)	265.4 (¥thousand)	3.5*

Source: Management and Coordination Agency, Ministry of Labour.

- Notes:
1. S.A. denotes seasonally adjusted.
 2. * denotes annual percent change.
 3. From January 1991, data of "Total hours worked" and "Total wages of regular employees" are for firms with from 5 to 30 employees.

