Job Changes for Re-employed Retirees

The Toyota Motor Case

Nagoya High Court (Sept. 28, 2016) 1146 *Rohan* 22

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Facts

Under Japanese law, if an employer fixes the mandatory retirement age of workers, it must not be below 60 years of age. If they set the retirement age under 65, they are required to provide continued employment (re-employment) up to age 65. Until March 2013, these re-employed workers could be restricted based on certain standards of eligibility under labor-management agreements. However, a legal amendment in 2012, with effect from April 2013, obliges companies to retain all employees until age 65 if they wish to continue working. To be precise, the age of mandatory re-employment has been raised by one year of age, in line with the starting age of employee pension payments. When this case occurred, mandatory re-employment applied to all employees up to age 61, beyond which certain restrictions are allowed for continued employment.

Worker X employed by Company Y retired on reaching the mandatory retirement age of 60 in July 2013. Y's work rule was to re-employ workers in their original jobs (known as "skilled partners") up to a maximum age of 65, but only if they met certain standards specified in their labor-management agreement. Workers who did not meet those standards were re-employed until age 61 as part-time workers on hourly wages. X had been employed in a clerical post, but the company proposed to re-employ him in cleaning work for four hours a day. X rejected this and filed a lawsuit in which he sought to have his status as a "skilled partner" confirmed. The Okazaki Branch of the Nagoya District Court dismissed X's suit on January 7th, 2016, whereupon X appealed.

Judgment

Nagoya High Court ordered the company to pay damages on September 28th, 2016, not recognizing X's status as a "skilled partner," but ruled that the company had contravened the law in proposing cleaning work that was completely different from X's job before retirement. The judgment stated that "though an employer has some discretion in deciding which working conditions to propose when re-employing workers after mandatory retirement, if the proposed conditions cannot be deemed to offer a substantial opportunity for re-employment, for example, providing for an unacceptably low level of wages in light of preventing periods of no pension and no income, or a job content that is utterly unacceptable to the worker in light of social norms, the action by the said employer is clearly against the gist of the Revised Act on Stabilization of Employment of Elderly Persons." Y did not contest the judgment, which therefore became final.

Commentary

Japan's legal policy concerning the employment of older persons has gradually tightened the obligation on companies to continue employing workers up to age 65 as long as the workers wish continued employment. This obligation used to be non-binding as a duty to endeavor, and from April 2006 it basically became legally binding with exceptions only permitted when they were based on labor management agreements. From April 2013 even those exceptions were removed. This case occurred immediately after the 2013 amendment. The key issue in the argument is that the company was still practicing the old system of selecting workers for re-employment based on a labor-management

agreement, but proposed re-employment in part-time cleaning work for a worker who would not have been re-employed under that system.

This case brings about two different arguments. The first is that the form of employment proposed to X was not a "skilled partner," provided in the company's work rule, but an hourly-paid part-time worker. The second is that the proposed job involved cleaning work, completely different from the previous clerical work. The judgment did not deem the former to be illegal. X's expected annual income as a part-time worker would have been about 1.27 million yen, equivalent to about 85% of the earnings-related component of employees' pension benefit. For this reason, the court ruled that "this cannot be deemed an unacceptably low level of wages." What the judgment deemed illegal was the change of job from clerical work to cleaning. However, this assertion is dubious on two counts.

On the assessment of expected wages in this case, X's annual income before retirement was around 9.7 million yen, and X claimed that his annual income would have been around 5.7 million yen if he had been re-employed as a skilled partner. The difference between the two amounts of estimated wage (5.7 million yen and 1.27 million yen) is too large, and any judgment deeming this difference as appropriate would need to have been accompanied by a justifying explanation (the need for a change of job to cleaning could have been used as justifying evidence, but the judgment refuted that).

On the job change from clerical to cleaning work, the judgment ruled that "if two job types belong to completely different job categories, they would already lack substance as continued employment, and would be regarded as a combination of regular dismissal and new hiring." For this reason, the court ruling severely criticizes the job change, stating that "unless there has been a situation warranting regular dismissal, proposing work with this content is not acceptable."

However, if the range of a job change is possible in the middle of an employment contract without any general agreement on restricting job types, a change of job should be even more possible in cases of re-employment. In the past, Japan's doctrine of judicial precedence has accepted a wide range of job changes on the premise of the Japanese-style employment practice and system. The possibilities are endless: examples might include a TV announcer being transferred to an information center, a nurse changing to a clerk, a taxi driver to a sales assistant, an editor to welfare office work, a child-care worker to kitchen staff, or a bartender to a room clerk. At least, rejecting this case of job change on the grounds that it "belongs to a completely different job type" runs counter to the trend set by these judicial precedents.

Some exceptional precedents that have deemed a job change illegal have been made in cases accompanied by a decrease in wages or transfer involving harassment. As mentioned above, however, this judgment did not deem low wages to be a problem. On the subject of harassment, the judgment suggests that "the doubt even arises that the intention was to deliberately propose the work that would cause a feeling of humiliation (i.e. cleaning), giving X no option but to take retirement." If the judgment had been composed with this as its main argument, it might have assumed a degree of persuasiveness.

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