

Course-Based Employment Systems and Gender Discrimination

The Towa Kogyo Case

Nagoya High Court (Apr. 27, 2016)

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Facts

X was hired at Y in 1987 and was initially a clerical worker, but from 1990 onward worked as a designer and was engaged in designing plants and industrial machinery. In 2001 X acquired second-class architect certification. Y introduced a “track” system, in place of separate wage systems for men and women, in 2002, but all men were designated as *sogo shoku* (employees on the career track) and all women as *ippan shoku* (employees on the clerical track). In the design department, only X, the only female employee out of seven members, was designated as *ippan shoku*, and her wages were lower than those of men who were her juniors. X repeatedly asked Y to reclassify her as *sogo shoku*, but was refused, and filed a lawsuit. The District Court of Kanazawa ordered Y to pay the difference between *sogo shoku* and *ippan shoku* wages in seniority-based payment and retirement allowance, as well as consolation money, for violating Article 4 of the Labor Standards Act (LSA), stating that “an employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman,” on March 26, 2015. However, the court did not recognize a violation in terms of gap in wages based on ability evaluations. Both X and Y appealed.

Judgment

The April 27, 2016 judgment from the Kanazawa branch of the Nagoya High Court was almost identical to the original judgment. It stated that “When Y’s track system was introduced, employees were not actually classified according to their *sogo shoku* and *ippan shoku* roles, but rather all

male employees were simply designated *sogo shoku* and all female employees *ippan shoku*...strongly indicating de facto gender-based discrimination. At Y, in effect, different wage tables were applied depending on gender, in violation of Article 4 of the Labor Standards Act.” As in the earlier ruling, Y was ordered to pay the difference between *sogo shoku* and *ippan shoku* wages in seniority-based payment and retirement allowance, as well as consolation money, but the court did not recognize a violation in terms of wages based on evaluation of “professional ability.” The judgment in the appeal went into somewhat more detail on this point than the original ruling, rejecting the call for compensation equivalent to the gap in ability-based pay on the grounds that “Employees’ promotion is based on personnel evaluations, and whether or not an employee satisfies the conditions for promotion is a matter of Y’s discretion.”

X appealed, but on May 17, 2017 the Supreme Court decided not to hear the case.



Commentary

It is a good illustration of typical Japanese labor management before passage of the Equal Employment Opportunity Law (EEO) of 1985, although such a clear-cut case of old-fashioned discrimination against women is somewhat unusual today. In the traditional Japanese-style employment system, male workers were generally expected to work for the same employer over the long term from

recruitment to retirement, their wages increasing with seniority, and to handle core business duties, while female workers handled supplementary duties, on the premise of short-term service from recruitment until resignation due to marriage, child-birth, or child-care. Influenced by the United Nations Convention on the Elimination of All Forms of Discrimination against Women in 1981, EEOL in 1985 called for employers' "duty-to-endeavor" to treat men and women equally in recruitment, hiring, assignment and promotion. It was not until the 1997 revision of the EEOL drastically modified the 1985 that discriminatory treatment in recruitment, hiring, assignment and promotion against women was prohibited. To comply with this, companies introduced track-based employment systems, with the former male track replaced by *sogo shoku* and the women's by *ippan shoku*, with workers to be classified regardless of gender. Until the 1997 revision, however, in many workplaces there was de facto continuation of the previous system, with all men classified as *sogo shoku*, and the vast majority of women as *ippan shoku*.

In this case, X, graduated from university with a science degree, had second-class architect certification, and was engaged in the design work, but was classified as *ippan shoku*, while male employee F, also in the design department, had a vocational-technical high school degree, and not only lacked second-class architect certification but could not even make a simple design drawing on his own, yet was classified as *sogo shoku*. This illustrates that the concept of "track" (*sogo shoku* vs. *ippan shoku*) in Japan differs from that of "job title" common in Western countries.

In this case the court found that "track" was simply slapping new labels onto the male and female categories, and that judgment is certainly applicable. Indeed, after X resigned in January 2012, Y introduced a new system in June 2012, and the first female *sogo shoku* employee was hired in April 2013.

Under the new system of *sogo shoku* and *ippan shoku*, classifications are to be applied to all workers regardless of gender. The concepts, however, are

different from those of job title or position common in Western countries, with *sogo shoku* referring to positions where employer could assign different duties or relocate to other regions, and *ippan shoku* to those who as a basic rule have limited scope of duties and whom employer cannot order for relocation.

Now, it is very confusing that Japan's EEOL and the guidelines based thereon employ the term *shokushu* (generally translated as "job type," "position," or "occupation") to describe this distinction between *sogo shoku* and *ippan shoku*, rather than to the Western-style concept of "occupation" such as sales, design, or clerical work. In the Japanese-style employment system, the concept of "job title" in the Western sense either does not exist or is of little importance. The important aspect of employment classification is whether job content and geographical location are limited or can be freely assigned at the employer's discretion. There is scarcely any literature that draws attention to these points. Many non-Japanese researchers may misunderstand the significance of references to *shoku-shu* in EEOL.

The call for the amount equivalent to gap in wages based on ability evaluation, which was rejected in this case, also relates to a unique aspect of Japanese wage system. Under this ability-based wage system, job grades and gradational salaries are determined based on evaluations of workers' ability to perform job duties. In practice, it takes widely varied, from strictly regulated reviews resulting in major disparities in wages and position, to something virtually indistinguishable from a seniority-based system, depending on the companies.

While this particular case is not clear-cut, X claimed that there was no difference in promotion or wage increase criteria depending on whether she was *sogo shoku* or *ippan shoku*, thus she could expect a similar rise in wages over time as *sogo shoku*, but Y denied this and rejected. The court went along with the strictly defined basic principle of ability evaluation-based treatment. With little or no concept of "job title" per se, it is extremely difficult to prove discrimination in individual evaluations of professional ability unless these evaluations are

in practice extremely seniority-based. This is an obstacle not only in gender discrimination cases, but also in cases of discrimination based on other factors, such as labor union membership.

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