

## Worker Status of the Joint Enterprise Cooperative Members

*The Joint Enterprise Cooperative Workers' Collective Wadachi Higashimurayama Case*

Tokyo High Court (Jun. 4, 2019) 1207 *Rodo Hanrei* 38

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### I. Facts

X engaged in work delivering goods as a member<sup>1</sup> of Y, a joint enterprise cooperative that operates a general motor truck transportation business. As a joint enterprise cooperative established in accordance with the Small and Medium-Sized Enterprise Cooperatives Act, Y is a workers' collective, meaning that all 14 of its members—including the chief director—are financial contributors, attend management meetings, and work as truck drivers. The members are paid remunerations based on their allotted delivery routes and while surplus funds are distributed among them, members do not receive overtime pay.

Having left employment with Y in March 2015, X brought an action in September that year demanding the payment of premium wages for overtime work in accordance with the Labor Standards Act. The point in dispute was whether X could be qualified as a “worker” (*rōdōsha*) as defined under the Labor Standards Act. On September 25, 2018, the Tachikawa branch of Tokyo District Court rejected X's demand on the grounds that X lacked worker status (*rōdōsha sei*). X responded by appealing to the Tokyo High Court.

### II. Judgment

The Tokyo High Court's judgment, passed on June 4, 2019, adhered mostly to that of the District Court, with slight additions. These can be summarized as follows:

(1) Regarding whether X was able to refuse work requests or instructions on the pursuit of work: The

directors issued requests to the members to carry out delivery work, but the delivery routes themselves were determined on the basis of consultation at management meetings and were in fact amended as necessary in light of members' opinions. Members were obliged to inform the operations manager at least two weeks before taking leave, for this was to allow for arrangements and handovers with other members (substitutes). The sharing of detailed reports with the management meeting in the event of violations of meeting resolutions was also merely a measure aimed at preventing further such incidents. There was a case in which a member was demoted to part-time worker (*arubaito*) status without said member's consent, but this decision was made on the basis of consultation among all members, and was deemed necessary to ensure the quality of service that should be offered by a joint enterprise cooperative consisting of a small number of members. On this basis it would be wrong to suggest that X lacked the freedom to refuse work requests or instructions.

(2) Regarding whether X was bound to directions in performing his/her work: The members were obliged to notify the operations manager when taking a detour from their delivery route, but detours themselves were not prohibited, and not subject to disciplinary action. The members received instructions regarding their delivery routes and driving methods, but these were aimed at ensuring that the trucks were driven safely. The members also had the tasks of selling co-op products that were on promotion and encouraging co-op insurance enrollment, but there were no related penalties even if they were not successful, and it cannot be

suggested that they received direction or supervision.

(3) Regarding whether X was bound to a given working time and place: The members generally gathered at 8:00 a.m. to load goods on the truck, after which a morning meeting was held. They would also work for around one hour after returning their working place, to file delivery slips and carry out other such tasks. However, given the nature of the work, it is reasonable that goods should be loaded at a time of day that avoids delays in deliveries. Conducting a morning meeting with all members present was also undeniably necessary process to ensure that the delivery work was conducted properly. It would therefore be wrong to suggest that X was strongly bound to a given working time and place.

(4) Regarding whether the payment X received was paid as remuneration for his/her work, not for the product: The remunerations received by members may be classed as payments based on the work completed, as members were paid on the basis of a record of the particular delivery routes they had finished. As the specific amount of remunerations was determined on the basis of whether the delivery work for a particular delivery route had been conducted, and the amount of time required to complete the deliveries was essentially irrelevant, it would be wrong to suggest that remunerations were paid as the equivalent for a certain amount of time worked. In addition, the surplus funds were generally divided equally among the members.

(5) Regarding whether X could be qualified as a business operator: It is not possible to suggest that X could be qualified as a business operator simply on the basis of the fact that the legal entity in question was a workers' collective. The key issue in question is whether, in light of the nature of the joint enterprise cooperative contract, the members were actively involved in decisions on the basis of actual consultations across the business of the cooperative as a whole. Y operates on the basis of the contributions from all members including the chief director in terms of their financial investments and work as truck drivers. There was therefore no significant difference between the status of the chief

director and other directors and that of X and the other members. All members had a practical role in the management of the cooperative, as management matters were determined by majority decisions in which all members had equal say. The members were operating the business together, actively contributing funds, engaging in management, and carrying out the work. Therefore, as a member of the cooperative, X can be classed as a business operator, and the work that X conducted cannot be seen as work carried out under the direction or supervision of another party.

Based on the above, it was determined that X cannot be qualified as a worker. The demand for overtime pay was therefore dismissed.

### III. Commentary

Both the District Court and the High Court judgments as well as an overwhelming number of other cases in which worker status under the Labor Standards Act has been disputed, follow the criteria for "worker" set out in the Labor Standards Act Study Group Report published in 1985. The criteria have been used in many judicial decisions including judgments by the Supreme Court. The major criteria for determining worker status are: (i) whether the person in question can refuse the orders of the client, (ii) whether the person is bound to the client's directions in performing his/her work, (iii) whether the person is bound to a given working time and place, (iv) whether the person can hire another person to perform his/her work, and (v) whether the payment the person receives is paid as remuneration for his/her work, not for the product, with the supplementary criteria of (vi) whether the person can be qualified as a business operator, (vii) whether the person has only one client, and (viii) other circumstances, which are to be considered comprehensively.

As noted in the May 2019 issue of this journal, in my commentary on the judgment of the *Belco* case, increasing numbers of people are engaging in working styles in which they have high levels of freedom to make decisions regarding working time and place, even if they are under labor contracts. With the current growing trend toward teleworking

and ICT based mobile work, people are able to work at home or elsewhere via information technology devices. The abovementioned 35-year-old Study Group Report criteria themselves are becoming somewhat outdated and in need of review. Aside from that, the case addressed here differs in that the very suitability of applying the judgment criteria to a type of organization like a workers' collective can be called into question.

Both the District Court and the High Court judgments appear to have given little concern to such a potential issue and simply judged X's worker status in reference to each point. However, (2) to (4) of the above judgment summaries entail a considerable amount of content that is specific to the employment type of a truck driver. If, conversely, said content is used as a basis to summarily reject worker status, this poses the risk that it will become impossible to eradicate malicious cases of truck drivers being qualified on paper as independent contractors.

The most important items addressed in the judgment of this case are ((5) of the judgment) whether X could be qualified as a business operator—the significance of which is slightly downplayed as one of the supplementary criteria in the aforementioned Study Group Report—and, in relation to that point, ((1) of the judgment) whether X could refuse orders of the client. However, in this case, the very interpreting of (5), and (1) only in relation to that point of (5), somewhat misses

the mark. In other words, the question whether those members are business operators or not seems to be an inappropriate issue given the nature of an organization like a workers' collective. The defining characteristic of workers' collectives is that each member is a financial contributor, manager, and worker in one, and in that sense all members share the roles of investor, manager, and worker to a certain extent. Looking at each characteristic separately is therefore the wrong approach—namely, it is not suitable to try to determine to what extent the plaintiff has worker status, or to what extent they have business operator status. Instead, the judgment should address the extent to which the nature of the workers' collective and the principle of members playing three roles are being correctly applied in practice. In that sense, (5) of the judgment is suited to the nature of this case.

It is therefore fair to conclude that the judgment itself was merely a perfunctory application of a conventional framework. And yet, as this case causes us to readdress the very applicability of that framework itself, it has a significant role to play in discussion on worker status.

1. "Partner" defined in the Small and Medium-Sized Enterprise Cooperatives Act is described as "member" in this article.

*The Joint Enterprise Cooperative Workers' Collective Wadachi Higashimurayama case, Rodo Hanrei (Rohan, Sanro Research Institute) 1207, pp.38–55.*

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