Whether a Staff Position in an Automobile Manufacturer Shall Be Deemed "Supervisory or Managerial Employee" Status under the Labor Standards Act

The *Nissan Motor Co. Ltd. ("Supervisory or Managerial Employee" Status)* Case
Yokohama District Court (Mar. 26, 2019) 1208 *Rodo Hanrei* 46

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I. Facts

1. Company Y is a stock company whose main line of business is the manufacturing and sales of automobiles. **X** entered into an indefinite-period labor contract and began working for Company Y on October 1, 2004.

2. **X** became a section chief in Company Y in April 2011, and was assigned to the Datsun Corporate Planning Department in April 2013, and to the Japan LCV Marketing Department in February 2016. Of these, **X** served as a manager in the Datsun Corporate Planning Department. The job duties of a manager included planning of items that its Program Directors (PD—department head) propose at the Product Decision Meetings (PDMs—meetings that decide investment amounts and return on investment for Company Y's new vehicle models) and attending those meetings. **X** also served as a marketing manager in the Japan LCV Marketing Department. The job duties of the marketing manager included drafting new marketing plans upon the approval by the marketing director (department head), and proposing those plans together with the marketing director at the Marketing Headquarters meetings (meetings that decide marketing plans for Company Y in Japan).

3. Company Y managed the attendance of its employees with an attendance management system that employees could access from their personal computers. **X** entered his hours worked in this system and received approval from an authorizer.

4. **X**'s wages were comprised of a basic salary, vacation pay, late night work allowance, commutation allowance and incentives. **X**'s basic salary (calculated by dividing the annual salary by 12 and rounding up fractions under 100 yen) was 866,700 yen per month (from April 2014 until March 2015) and 883,400 yen per month (from April 2015 until March 2016). **X**'s annual income between January and December 2015 was 12,343,925 yen.

5. In March 2016, **X** collapsed while working in Company Y's head office and died of a brain stem hemorrhage. This case involved a demand by **Z** (**X**'s spouse), who inherited the right to claim **X**'s wages as a result of **X**'s death, for the payment of premium wages, etc., stipulated in the Labor Standards Act (LSA) for **X**'s overtime work between September 2014 and March 2016. Whether or not **X** fell under the category of a "supervisory or managerial employee" as stipulated in Article 41 No.2 of the LSA was contested in the case.

II. Judgment

The Yokohama District Court denied **X**'s

"supervisory or managerial employee" status. The judgment is summarized below.

(1) The purport of Article 41 No.2 of the LSA is this: A "supervisory or managerial employee" is a person who is, due to the nature of work and managerial necessity, given important job duties, responsibilities, and authority in a position that may demand activity beyond regulated limits on working hours, rest periods, rest days, etc., in a position integrated with management. Also, his/her actual work situation may not fit with regulations on working hours, etc. On the other hand, he/she receives preferential treatment appropriate for that position in terms of wages and others compared with other ordinary employees and is permitted to manage working hours at his/her discretion. Thus, there is no defectiveness in the protection of said "supervisory or managerial employees" even if regulations on working hours, etc., in the LSA are not satisfied. Given this, the question of whether an employee falls under the category of "supervisory or managerial employees" based on the LSA should be judged from the following viewpoints (i) Is the employee given important job duties, responsibilities, and authority which are sufficient to indicate that he/she is in a position that can be described as being, in effect, integrated with management?, (ii) Is the employee permitted to manage his/her working hours at his/her discretion?, and (iii) Does the employee receive treatment in the context of wage etc., that is appropriate for the position and responsibilities of a "supervisory or managerial employee"?

(2) Company Y claimed, based on an administrative interpretation (Mar.14, 1988, *Kihatsu* No.150 [administrative notification issued by the Director of the Labor Standards Inspection Office]), that classification as a "supervisory or managerial employee" should be recognized if the requirements of (iv) the employee is drawing up plans regarding important management matters, and (v) the employee is engaged in line occupations, that is, given a rank equal to or above line manager were satisfied. However, of these five, (v) is interpreted as having the same meaning as (iii) above, and therefore it is enough to see it as a factor for consideration in (i) to (iii) above, rather than as an individual requirement or viewpoint. On the other hand, regarding (iv), from the viewpoint of the above mentioned purport of Article 41 No.2 of the LSA, it should also be interpreted that it is not enough to say that the employee simply handles job duties such as drawing up plans regarding of important management matters, but rather that those job duties and responsibilities are essential as to be deemed to belong to a position integrated with management. Thus, ultimately, this (iv) is nothing more than a factor for consideration in the study undertaken from the viewpoint of the aforementioned (i).

(3) At the Datsun Corporate Planning Department, it is recognized that managers were in a position of attending the PDMs that decide investment amounts and return on investment for new vehicle models and of planning proposals for investment amounts and return on investment. However, the people who actually make proposals at the PDMs are the PDs. Given that the proposals that managers plan must be approved by the PDs, and the persons who exercise a direct influence on the formulation of management decisions are the PDs. Managers are no more than assistants to the PDs, and their influence on the formation of management decisions is indirect.

(4) At the Japan LCV Marketing Department, marketing managers were recognized to be in a position to draft marketing plans and propose them in the Marketing Headquarters meetings that adopt them. However, the marketing managers must receive prior approval for their marketing plans from the marketing director before making proposals to the Marketing Headquarters meetings. Moreover, the marketing director is also in a position to attend the meetings and propose marketing plans together with the marketing managers. In light of these circumstances, the marketing managers are no more than assistants to the marketing director and their influence on the formulation of management decisions should be deemed indirect.

(5) **X** entered his hours worked in the attendance management system on this case and received approval from an authorizer. However, despite the fact that the standard working hours in both the

Datsun Corporate Planning Department and the Japan LCV Marketing Department were 8:30 a.m. to 5:30 p.m. (with a one-hour break), **X** often came to work after 8:30 a.m. and left work before 5:30 p.m. Considering the fact that **X**'s wages were not deducted as a result of coming to work late or leaving work early, it can be recognized that **X** had discretion in his working hours.

(6) **X**'s basic wage was 866,700 yen or 883,400 yen per month, and **X**'s annual income reached 12,343,925 yen. This annual income was 2,440,492 yen higher than **X**'s subordinates and thus, in terms of treatment, is recognized as being appropriate for a "supervisory or managerial employee."

(7) From the above, **X** had discretion with regard to his working hours and received treatment appropriate for a "supervisory or managerial employee." However, it cannot be recognized that **X** was given important job duties, responsibilities, and authority which are sufficient to indicate that he was in a position that can be described as being, in effect, integrated with management. Therefore, considering all of these circumstances, **X** is not recognized as falling under the category of "supervisory or managerial employees."

III. Commentary

Japan's LSA regulates working hours from the purport of protecting employees' health. In particular, Article 32 of the Act establishes upper limits on working hours that employers can have employees work of eight hours per day and 40 hours per week. Additionally, Article 37 of the LSA imposes an obligation to pay premium wages on employers when they have employees work in excess of these limits (i.e., overtime work). However, some employees must be asked to work beyond the limits set by provisions on working hours established by the LSA in order to handle important job duties or responsibilities in their companies. Because of this, Article 41 No.2 of the LSA stipulates that the provisions on working hours shall not be applied to "one in a position of supervision or management" (a "supervisory or managerial employee"). Based on this, judicial precedents have judged whether an employee falls under the category of a "supervisory or managerial employee" or not, using as *merkmal* the employee's (i) being in a position integrated with management in terms of the determination of working conditions of the subordinates and other areas of labor management, (ii) having discretion in his or her working hours on, and (iii) receipt of treatment in terms of wages that is appropriate for a "supervisory or managerial employee."

Incidentally, personnel management that is based on an "ability-based grade system" is predominant in Japanese companies. Under this system, employees are classified into several grades depending on their ability to perform job duties, and their wages (particularly basic wages) are determined based on their grades. A system of corresponding management posts (e.g., department head, section chief, etc.) is established for employees who reach a certain level of grades. Employers select some employees from all personnel in the same grade and place them in management posts. The employees who are placed in management posts in this way have the authority to engage in labor management of other employees (subordinates) and can also discretionarily determine their own times for coming to and leaving work. They also receive a managerial-position allowance, etc. Consequently, there are many cases in which an employee is deemed to be the "supervisory or managerial employee" stipulated in Article 41 No.2 of the LSA after reference to the above *merkmal* (i) to (iii). This kind of supervisor is called a "line manager" in Japan.

On the other hand, there are "staff positions" in the Japanese management system. In general, employees in staff positions are different from line managers in that they engage in specialized job duties, such as business management-related planning and surveys, and do not have authority in the labor management of subordinates. Specifically, under Japan's ability-based grade system, it has often been the case that employees of the same grade who were not selected to be a line manager (or who completed serving as a line manager) are appointed to staff positions. In administrative notifications issued in 1977 (Feb. 28, 1977, *Kihatsu* No.104–2;

Feb. 28, 1977, *Kihatsu* No.105), the Ministry of Labor (currently the Ministry of Health, Labour and Welfare) presented an administrative interpretation recognizing employees in staff positions at financial institutions as the "supervisory or managerial employees" stipulated in Article 41 No.2 of the LSA when they are (iv) drawing up plans and other job duties regarding important management matters and (v) given a rank in the company that is equal to or above line managers. This is based on the idea that, when line managers and employees in staff positions are at the same grade in an ability-based grade system and the former are classified as having the status of "supervisory or managerial employees" but the latter are not, the fact that premium wages will be paid only to those in staff positions for work of more than eight hours a day, even when the wages and other treatment of both are the same, is unfair. The Ministry of Labor subsequently issued an administrative notification in 1988 (Mar. 14, 1988, *Kihatsu* No.150) that restated the ministry's interpretation that employees in staff positions in financial institutions fall under the category of "supervisory or managerial employees," if they meet the aforementioned (iv) and (v). Moreover, for employees in staff positions who are not in financial institutions, the administrative notification presented the administrative interpretation that "depending on the degree of treatment in the company, even if such employees are treated similarly to "supervisory or managerial employees" and exempt from applying the LSA, there is no particular risk of defectiveness in protection from the standpoint of their position" and that "handling that includes such employees within a certain scope among employees falling under Article 41 No.2 of the LSA is considered valid."

However, on the other hand, among the past judicial precedents in which the applicability of "supervisory or managerial employee" status for employees in staff positions has been contested, many are seen to present judgments that apply the above-examined (i) to (iii) as it is to employees in staff positions (The *Okabe Seisakusho* case, Tokyo District Court [May 26, 2006] 918 *Rohan* 5; The *HSBC Services Japan Limited* case [December 27, 2011] 1044 *Rohan* 5). Based on such judgments, "supervisory or managerial employee" status has been denied for the reason that it lacks (i), in particular, for an employee in a staff position who does not have authority in labor management concerning subordinates.

Against this backdrop, this case focused on the "supervisory or managerial employee" status of **X**, who was a section chief in Company Y, a leading Japanese automobile manufacturer. **X** served as a manager and marketing manager who drew up plans submitted to important managerial meetings in Company Y **(I. 2**) and can be described as an employee in a staff position. The significance of the case's judgment is that it recognized there is room for employees in staff positions to be deemed "supervisory or managerial employees" in certain cases (even though, in the end, **X**'s "supervisory or managerial employee" status was denied). That is to say, although the judgment used the conventional (i) to (iii) within the framework for judging "supervisory or managerial employee" status (**II. (1)**). However, for the specific decision concerning (i), it made its decision based on how much **X** had influence on the formulation of Company Y's management decisions (**II. (3)**, **(4)**). In other words, unlike past judicial precedents, the judgment determined that it did not matter whether or not an employee had labor management authority concerning subordinates in the decision for (i); indeed, if it were found in this case that **X** was capable of exercising a direct influence on the formation of Company Y's management decisions, it is possible that **X**'s "supervisory or managerial employee" status would have been affirmed. (It should be mentioned that, in this case, **X** had one subordinate when he belonged to the Datsun Corporate Planning Department and when he belonged to the Japan LCV Marketing Department. However, the fact that **X** had labor management authority concerning those subordinates was not recognized in the judgment).

It can be said that the difference between this judgment and past judicial precedents comes from the understanding of the administrative interpretations (and particularly the administrative

notification of 1988) that were examined above. Specifically, this judgment did not apply the administrative interpretation (= the interpretation recognizing employees in staff positions who satisfy the requirements of the aforementioned (iv) and (v) as "supervisory or managerial employees") as it is. However, it did position "the employee is in charge of drawing up plans regarding important management matters" of (iv) as a factor for consideration in the decision on (i) (**II. (2)**). This point appears to be linked to the judgment's principle of deciding (i) from the viewpoint of whether **X**'s work of drafting plans etc. could directly influence on Company Y's management decisions.

However, several questions can be raised with regard to this judgment. The first concern is the range of administrative interpretations. Specifically, as was mentioned above, it is understood that this judgment took administrative interpretations into account to a certain degree when deciding the case. However, the interpretations presented in the administrative notifications of 1977 and 1988 that recognize employees in staff positions who satisfy the aforementioned (iv) and (v) as "supervisory or managerial employees" were made with financial institutions in mind. It is unclear why the interpretations of those administrative notifications can be considered in this case, which involved an automobile manufacturer. As was mentioned previously, the administrative notification of 1988 does recognize the possibility that employees in staff positions not at financial institutions will be classified as "supervisory or managerial employees," and it can be understood that the same administrative notification presents the interpretation that such employees in staff positions shall be recognized as "supervisory or managerial employees" if they meet (iv) and (v). However, if that was the case, it seems there was a need to explain the reason for such a reading.

Secondly, if it is understood that the range of the administrative interpretations (administrative notification of 1988) extends to this case, doubts arise as to whether the recognizing decision concerning (iii) in the judgment is consistent with the administrative interpretations. Specifically, the judgment recognized that **X** was receiving treatment appropriate for a "supervisory or managerial employee" for the reason that **X**'s annual income was high in comparison with the annual income of his subordinates (**II. (6)**). However, as was mentioned above, a reason that the administrative interpretations reached so far as to recognize employees in staff positions who meet (iv) and (v) as "supervisory or managerial employees" is that, based on the ability-based grade system, unfairness could arise when line managers and employees in staff positions are at the same grade. Accordingly, when deciding on whether an employee in a staff position is receiving treatment appropriate for a "supervisory or managerial employee," the focus of comparison should be line managers who are at the same grade as **X**. Regarding this point, the judgment itself stated that (v) "the employee is given a rank in the company that is equal to or above line manager" presented in the administrative interpretations has the same meaning as (iii) (**II. (2**)). Nevertheless, as is shown above, this perspective is missing in the specific decision concerning the *merkmal* of (iii), and thus the judgment appears to have an inherent inconsistency here.

Regarding employees who engage in the planning or drafting matters concerning business operations, it should be noted that Article 38-4 of the LSA separately establishes a system permitting the leaving of decisions concerning the execution of those operations and working hours to the discretion of the employee (Discretionary-Work Systems for Planning Work). In this case, it could be said that, instead of treating **X** as a "supervisory or managerial employee," Company Y should have applied this Discretionary-Work Systems for Planning Work in order to allow **X** to work flexibly. However, it has been pointed out that there are strict requirements for introducing the Discretionary-Work Systems for Planning Work and that the system is cumbersome to establish. This may be leading corporate practices into handling employees in staff positions as "supervisory or managerial employees." Therefore, the kind of staff position handling seen in this case is a problem that should be discussed not only

from the perspective of "supervisory or managerial employee" status (Article 41 No. 2 of the LSA) but also within the whole legislative policy concerning working hour regulations.

The *Nissan Motor Co. Ltd.* (*"Supervisory or Managerial Employee" Status*) case, *Rodo Hanrei* (*Rohan*, Sanro Research Institute) 1208, pp.46–59. See also *Rosei Jiho* (Romu Gyosei) 3977, pp.12–13 and *Journal of Labor Cases* (Rodo Kaihatsu Kenkyukai) 88, pp.26–27.

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