

Illegality of the Disparity in Working Conditions between Hourly Paid Fixed-term Contract Employees and Monthly Paid Regular Employees

The *Osaka Medical and Pharmaceutical University (former Osaka Medical University)* Case

The Supreme Court (Oct. 13, 2020) 1229 *Rodo Hanrei* 77

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I. Facts

On January 29, 2013, X signed a fixed-term labor contract with Y for a contract period until March 31 of the same year, and worked as an *arubaito* employee.¹ Thereafter, X renewed the contract for a period of one year three times, and resigned on March 31, 2016. X was diagnosed with adjustment disorder in March 2015 and did not come to work from the 9th of the same month until the above resignation date, and was treated as having taken annual paid leave for about one month from April to May of the same year, after which she was treated as being absent from work.

At the time of X's employment, Y had regular, contract, *arubaito*, and entrusted (*shokutaku*)² employees for clerical tasks, but only regular employees had indefinite-term labor contracts. Regular employees and contract employees were paid on a monthly basis, and entrusted employees were paid on a monthly or annual basis. In contrast, *arubaito* employees were paid on an hourly basis. While about 40% of them had the same scheduled working hours as regular employees, working hours of the rest were shorter than those of regular employees.

At the time of X's employment, in accordance with the rules of employment, etc., regular employees were entitled to basic pay, bonus, wages during the year-end and New Year holidays and the anniversary of the founding of the university, annual paid leave,

special paid leave during the summer, wages during absences due to personal injury or illness, and grants for medical expenses at the affiliated hospital. According to the salary regulations for regular employees, the basic pay is determined by taking into consideration the kind of job, age, educational background, and work history of the regular employees at the time the regular employee is hired, and the salary is to be increased according to years of service taking their work performance into consideration. Regarding bonuses, it was only stipulated that temporary or regular wages would be paid when Y deemed it necessary.

On the other hand, based on the bylaws for *arubaito* employees, *arubaito* employees were paid hourly wages and granted annual paid leave as prescribed by the Labor Standards Act, but bonuses, wages during the year-end and New Year holidays and the anniversary of the founding of the university, other annual paid leave, special paid leave during the summer, wages during absences due to personal injury or illness, and grants for medical expenses at the affiliated hospital were not paid or granted. Under the bylaws for *arubaito* employees, the hourly wage rate was to be changed when there was a change in the kind of job, etc. There was no provision for wage increases.

Regular employees were engaged in all kinds of work at the university and the affiliated hospital, and their duties varied depending on where they were assigned, including general affairs, academic

affairs, and hospital administration. In the departments where regular employees were assigned, most of the tasks were not routine or simple, and some of the tasks included crucial measures that affected the entire corporation, and the responsibilities associated with the work were considerable. In addition, the rules of employment for regular employees stipulate that regular employees may be ordered transfers within or beyond the boundary of the university, and personnel transfers are conducted for the purpose of developing and utilizing human resources.

On the other hand, under the bylaws for *arubaito* employees, the employment period for *arubaito* employees is limited to one year. Although their contract may be renewed, the upper limit is set at five years, and their duties are mainly routine and simple. The bylaws for *arubaito* employees stipulate that *arubaito* employees may be ordered transfers to other departments, but since they are hired with a clear description of their jobs, in principle they are not reassigned to other departments by job-related orders, and personnel transfers are limited to exceptional and individual circumstances.

At Y, there was a system of promotion by examination from *arubaito* employees to contract employees and from contract employees to regular employees.

The university in question has a total of eight laboratories for basic courses that do not have medical departments, each with one or two laboratory clerks, and in 1999, there were nine laboratory clerks as regular employees. Regarding the laboratory clerks, since more than half of their work was routine and simple, Y started to replace them with *arubaito* employees since around 2001 by transferring out regular employees, and from April 2013 to March 2015, there were left only four regular employees. Three of these regular employees had never engaged in any work other than laboratory clerical work. In the laboratories where regular employees remained, there were duties such as editing of the university's English-language journals, public relations work, dealing with bereaved families regarding pathological autopsies and other

matters requiring inter-departmental cooperation, and management of reagents such as poisonous and deleterious substances, etc., for which Y judged that it was necessary to assign regular employees instead of *arubaito* employees.

In the fixed-term labor contract that X concluded in January 2013, the place of work was the pharmacology laboratory at the university, the main duties were secretarial work in the pharmacology laboratory, and the wage was 950 yen per hour. The contract was renewed three times from April of each year, and the hourly wage rate was sometimes slightly increased. However, there was no particular change in her job content, which included schedule management and adjustment for professors, teaching staff and research assistants, handling of telephone calls and visitors, preparation of materials for professors' research presentations, accompanying professors when they went out, various office work in the laboratory, laboratory accounting, equipment management, cleaning and waste disposal, and management of receipts and payments. In addition, X's scheduled working hours were full-time.

The average monthly wage of X from April 2013 to March 2014 was 149,170 yen, and assuming that she worked full-time for the entire period, her monthly wage would have been approximately 150,000 to 160,000 yen. On the other hand, the starting salary of a regular employee newly hired in April 2013 was 192,570 yen, and there was a difference of about 20% in wages (basic pay) between X and the regular employee.

At Y, bonuses were paid to regular employees twice a year. In fiscal year 2014, the bonus was equivalent to 2.1 months of basic pay plus 23,000 yen in the summer, 2.5 months of basic pay plus 24,000 yen in the winter, and in fiscal years 2010, 2011, and 2013, the bonus was equivalent to 4.6 months of basic pay for the entire year, so the standard amount was equivalent to 4.6 months of basic pay for the entire year. Additionally, contract employees were paid a bonus that was approximately 80% of the bonus paid to regular employees. In contrast, bonuses were not paid to *arubaito* employees. The annual amount of wages paid to X

was about 55% of the total amount of basic pay and bonus paid to the regular employee who was newly hired in April 2013.

At Y, when a regular employee was absent from work due to personal injury or illness, the full monthly salary was paid for six months, after which the employee was ordered to take a leave of absence and 20% of the standard salary was paid as leave pay. In contrast, there was no compensation or leave system for *arubaito* employees during absences.

X filed a lawsuit on the grounds that the difference in bonuses, wages during absences due to personal injury or illness, etc. between X and regular employees with indefinite-term labor contracts violated Article 20 of the Labor Contracts Act. The main issue in this case is whether or not the difference in working conditions between regular and *arubaito* employees at Y can be deemed unreasonable.

II. Judgment

High court judgment was partially reversed and partially modified.

(1) Regarding bonuses

In light of the fact that the disparity in working conditions between employees with fixed-term labor contracts and those with indefinite-term labor contracts has been a problem, Article 20 of the Labor Contracts Act prohibits making working conditions unreasonable due to the existence of a fixed term in order to ensure fair treatment of employees with fixed-term labor contracts. Even if the difference in working conditions relates to the payment of bonuses, it may be considered unreasonable under the Article. However, in making such judgements, as with any other differences in working conditions, it should be examined whether or not the difference in working conditions can be evaluated as unreasonable by taking into account the various circumstances prescribed in the Article, considering the nature of the bonus and the purpose for which it is paid by the employer.

Y's bonus for regular employees is only stipulated in the salary regulations for regular

employees to be paid when deemed necessary, and as a lump-sum payment to be paid separately from the basic pay, whether it is paid or not and the criteria for payment are determined by Y on a case-by-case basis, taking into account the financial situation during the calculation period. In addition, the said bonus is based on 4.6 months of basic pay for the whole year, and in light of the actual payment, it is not linked to Y's business performance, but is recognized to include the purposes of deferred payment of compensation for labor during the calculation period, uniform reward for meritorious service, and improvement of future work motivation. It can be said that the basic pay of regular employees is raised in accordance with the number of years of service taking their work performance into account, and has the character of an ability-based wage corresponding to the improvement of their ability to perform their job duties in accordance with the number of years of service; in general, the level of difficulty and responsibility of the work is high, and personnel transfers are conducted for the purpose of developing and utilizing human resources. In light of the salary system of regular employees and the required level of ability to perform their duties and their responsibilities, etc., it can be said that Y decided to pay bonuses to regular employees for the purpose of securing and retaining personnel who can perform their duties as regular employees.

When we look at "the substance of the duties and the level of responsibility associated with those duties (hereinafter referred to as the "content of duties")" prescribed in Article 20 concerning X and the regular employee as a laboratory clerk who has been designated the subject of comparison by X, there were some similarities in the substance of the duties between the both employees. However, while X's duties were considered to be fairly light, the regular employee as a laboratory clerk had to engage in other duties such as editing the university's English-language academic journals, dealing with bereaved families regarding pathological autopsies, and other duties requiring inter-departmental cooperation, as well as managing reagents such as poisonous and deleterious substances. It cannot be

denied that there were certain differences in the content of duties of the two. In addition, while the regular-employee laboratory clerks could be ordered to change their assignments under the rules of employment, the *arubaito* employees were not, in principle, reassigned by job-related orders, and personnel transfers were made on an exceptional and individual basis. It cannot be denied that there was a certain difference in the scope of changes in the content of duties and assignment (hereinafter referred to as the “scope of changes”) between the two.

Furthermore, at Y, all regular employees are subject to the same employment management category and are subject to the same rule of employment, etc., and their working conditions are set based on their content of duties and the scope of changes, etc. Y has been replacing laboratory clerks with *arubaito* employees since around 2001, except for laboratories with certain duties, etc., because more than half of the laboratory clerks’ substance of the duties was routine and simple. As a result, at the time when X was working, the number of regular employees as laboratory clerks had been reduced to only four, which was a very small number compared to the majority of other regular employees whose work was more difficult and had a higher level of responsibility, and who were also subject to personnel transfers. Thus, it can be said that the fact that the regular employees who are laboratory clerks differed from the majority of other regular employees in terms of their content of duties and the scope of changes was related to the circumstances concerning the substance of duties of laboratory clerks and the review of staffing that Y had conducted. For *arubaito* employees, there was a system of step-by-step promotion through examination in order to be contract and regular employees. It is appropriate to consider these circumstances as “other circumstances” prescribed in Article 20 of the Labor Contracts Act in determining whether the difference in working conditions between the regular-employee laboratory clerk and X is deemed unreasonable.

Based on the nature of Y’s bonus for regular

employees and the purposes of providing the bonuses, and considering the content of duties and the scope of changes of regular laboratory clerks and those of *arubaito* employees, therefore, it cannot be said that the difference in working conditions regarding bonuses between regular employees as laboratory clerks and X can be evaluated as unreasonable.

(2) Wages during absence due to personal injury or illness

It is understood that the reason why Y decided to pay salaries and leave pay to regular employees who are unable to provide services due to personal injury or illness is to ensure the livelihood of regular employees and to maintain and secure their employment, in light of the fact that regular employees are expected to work continuously for a long period of time or to work continuously in the future. Given the nature of such wages during absence due to personal injury or illness and the purpose of providing such wages at Y, it can be said that the said wage system is based on the premise of maintaining and securing the employment of such employees.

Looking at the content of duties and the scope of changes of the regular employee as laboratory clerks and the *arubaito* employees, it cannot be denied that there were certain differences between them in terms of their content of duties and the scope of changes. In addition, the fact that only a very small number of regular employees remained as laboratory clerks and that their content of duties and scope of changes differed from those of the majority of regular employees was related to the circumstances concerning the substance of duties of laboratory clerks and the review of staffing, etc., as well as the fact that there was a system of promotion through examination for changing job titles.

In addition to the circumstances related to the content of duties and the scope of changes, the contract period of *arubaito* employees is limited to one year, though it may be renewed, and it is difficult to say that they are scheduled to work on the premise of long-term employment. Given these

facts, the purposes of the system to maintain and secure employment as described above cannot be said to apply immediately to *arubaito* employees. Furthermore, X was treated as being absent from work after more than two years of service, and her period of employment, including the period of absence, was only more than three years, and it is difficult to say that her period of service was for a considerable length of time. There are no circumstances that suggest that X's fixed-term labor contract would be naturally renewed and the contract period continued. Therefore, the difference in working conditions regarding wages during absence due to personal injury or illness between X and regular employees as laboratory clerks cannot be evaluated as unreasonable.

III. Commentary

(1) Significance of this judgment

Article 20 of the Labor Contracts Act stipulates that in the event that the working conditions of an employee under a fixed-term contract differ from those of an employee under an indefinite-term contract, such difference “shall not be deemed unreasonable in light of the substance of the employee’s duties and the level of responsibility associated with those duties (hereinafter referred to as the “content of duties” in this Article), the scope of changes in the content of duties and assignment, and other circumstances.” This provision prohibits unreasonable differences in working conditions due to the existence of a fixed term. It should be noted that this provision does not uniformly prohibit differences in working conditions due to the existence of a fixed term, but only prohibits “unreasonable differences.” It should be also emphasized that the provision does not require that indefinite-term contract employees and fixed-term contract employees be engaged in equal job.

With regard to Article 20 of the Labor Contracts Act introduced in 2012, the Japanese Supreme Court clarified its interpretation of some issues in the 2018 judgments in the *Hamakyorex* case (Supreme Court (Jun. 1, 2018) 72–2 *Minshu* 88) and the *Nagasawa Un-yu* case (Supreme Court (Jun. 1, 2018) 72–2

Minshu 202), but there has been no judgment on bonuses. Bonuses account for a large portion of the annual income of regular employees in Japan. In this case, the amount of bonus was equivalent to 4.6 months of monthly salary per year (amounting to about 28% of annual income). This judgment is important because it is the first time that the Supreme Court has ruled on whether or not the difference between bonuses paid to indefinite-term contract employees (regular employees) and not paid to fixed-term contract employees is considered unreasonable. The Labor Contracts Act was amended by the Laws on Work Style Reform passed on June 29, 2018, and Article 20 was deleted and incorporated into Article 8 of the Part-Time and Fixed-term Workers Act. Although this judgment was made in a case before the 2018 amendments were made, it is generally understood that the Supreme Court’s interpretation of Article 20 of the Labor Contracts Act should, in principle, also be referred to when interpreting the amended law.

(2) The nature of the ability-based grade system and Article 20 of the Labor Contracts Act as “regulation of balanced treatment”

In the case of “job-based wage,” where a person is hired for a specific job and the wage is determined by the difficulty and value of the job, the employee should be paid the equal amount of wage for equal job, regardless of whether or not the labor contract has a fixed term. Under such a job-based wage system commonly found in European countries, when determining whether a fixed-term contract employee is being treated disadvantageously, it is necessary to select an indefinite-term contract employee engaged in the same job as a comparator (if such a comparator does not exist, wage tables applicable to indefinite-term contract employees, etc., are referenced). In contrast, many Japanese companies have adopted a personnel management system called the “ability-based grade system” (ability-based wage system). Under this system, the job grades of employees are first rated according to their ability or potential to perform their job duties, and then their basic pay is determined according to

the rating. In other words, in the case of indefinite-term contract employees in Japan, their wages are not determined by the value of the job they are actually engaged in, but by the “value as a human resource” or their potential to perform their duties.

On the other hand, for fixed-term contract employees, the job-based wage system is also applied in Japan, and wages are often determined according to the difficulty of the job and the level of responsibility. While indefinite-term contract employees are paid on a monthly or annual salary basis, fixed-term contract employees are often paid on an hourly basis. In other words, in Japan, indefinite-term contract employees and fixed-term contract employees are employed under different wage determination systems, and thus even if they are engaged in the same job, their wages differ due to differences in the wage determinants in the respective wage systems, namely the potential to perform their duties or the job values.

Thus, in the case of Japan, since the method of determining wages differs between fixed-term contract employees and indefinite-term contract employees, Article 20 of the Labor Contracts Act have not adopted such regulatory method that prohibits different treatment of employees engaged in the same job as illegal discrimination as in the case of Europe, where fixed-term contract employees and indefinite-term contract employees work under the same job-based wage system. Initially, in order to improve the working conditions of part-time employees, Article 8 of the revised Part-Time Workers Act of 2007 prohibited the discriminatory treatment of part-time employees whose (1) content of duties, (2) scope of changes in the content of duties and assignment, and (3) contract periods are all the same as those of full-time employees. However, only 1.3% of all part-time employees³ met all these three requirements and could be considered the same as regular employees. Since the number of part-timers protected by such regulations was extremely limited, it was ineffective in correcting the disparity between non-regular and regular employees. The major complaints of non-regular employees in Japan were that, even if the content of

duties and the scope of changes were not identical between regular and non-regular employees, the disparity in treatment and remuneration between them was unreasonably too large compared to those differences. Therefore, Article 20 of the Labor Contracts Act of 2012, which regulates fixed-term contract employees, has changed its regulatory approach. It does not require that fixed-term contract employees and regular employees be the same in matters (1) and (2) ((3) contract period is naturally different, since Article 20 deals with disparity between fixed-term and indefinite-term contract employees). Under Article 20, (1) and (2) are only factors for judging the unreasonableness of the difference, and if the difference is deemed unreasonable, it is illegal (later, the Part-Time Workers Act was amended in 2014 to adopt the same regulation). Thus, Japan has adopted a unique regulation of “balanced treatment” that does not presuppose equal work, but makes it illegal if there is an *unreasonable* disparity in the treatment of employees, even if they are engaged in different work. Under such a regulation, there is no need for the court to identify comparators engaged in the same work as non-regular employees. It is up to the plaintiff employee to choose which regular employee to compare with to claim that the disparity in working conditions is unreasonable. The greater the disparity in working conditions between the plaintiff employee and the plaintiff’s own chosen comparator, the easier it is to prove unreasonableness, but the greater the difference in the content of duties and the scope of changes, the more difficult it is to prove unreasonableness. This is a matter of the plaintiff’s litigation strategy.

Given the difference between the above-mentioned regulation under Article 20 of the Labor Contracts Act and the general anti-discrimination regulations that presuppose the existence of employees engaged in the same work, it is understandable that the Supreme Court has endorsed the position of leaving the selection of comparators to the plaintiff’s choice. As for the choice of the comparator, the lower courts were divided into two positions. One is the position that the comparator is

objectively determined. For example, the judgment of the High Court in this case (Osaka High Court (Feb. 15, 2019) 1199 *Rohan* 5) rejected X's argument that person A, an indefinite-term contract employee who is also assigned as a laboratory clerk, should be a comparator. The court ruled that the comparator should be objectively determined, and is not something that can be chosen by a plaintiff. The other position is that the comparator is determined by the plaintiff's designation. For example, the Tokyo High Court judgment in the *Metro Commerce* case (Tokyo High Court (February 20, 2019) 1198 *Rohan* 5) rejected the employer's argument that the entire employees with indefinite-term contracts should be the comparator, and made the regular employee engaged in the station stall work designated by the plaintiff employee the comparator. In the midst of such conflicts among the lower courts, the Supreme Court endorsed the latter position and settled the issue. This is a major feature of the Japanese unique regulation that makes it illegal if the disparity in treatment between regular and non-regular employees is unreasonable even if their engaged works are different, whereas under the European regulations, the inferior working conditions of non-regular employees cannot be redressed unless a comparator engaged in the same work can be identified.

(3) The nature and purpose of the working conditions being compared

According to the judgment, when examining whether the difference in the treatment of bonuses between X and the comparator is unreasonable, the unreasonableness of the difference is evaluated based on the nature of the bonus and the purpose of its payment. In addition, the "intent" of paying the bonus is also taken into consideration in the specific examination. The Supreme Court judgment in the *Metro Commerce* case, as well as three Supreme Court judgments in the *Japan Post* case, which were handed down at about the same time as this judgment, also examined the "nature," "purpose," and "intent" of the working conditions that are subject to the judgement of unreasonable differences.

With regard to these three terms, one commentator argues that they are used differently, saying that "nature" should be objectively clarified by the court through a comprehensive judgement of the requirements for payment, calculation method, etc., while "purpose" is determined by the subjective will of the employer.⁴ However, a straightforward reading of the judgment in this case does not necessarily mean that the two are used separately under a different standard. Article 8 of the Part-time and Fixed-term Workers Act,⁵ which incorporated Article 20 of the Labor Contracts Act, added the phrase "that are found to be appropriate in light of the nature of the treatment and the purpose of treating workers in that way" in determining the unreasonableness of differences in working conditions. The five Supreme Court judgments handed down in October 2020, including this case, are presumed to have used the aforementioned terminology in order to make judgments applicable under Article 8 of the revised Act.

(4) "Securing capable human resources" and judgment on unreasonableness of non-payment of bonus to *arubaito* employees

Before this judgment was issued, there were a number of lower court judgments that denied the unreasonableness of differences in working conditions, such as bonuses, on the ground that the purpose of such differences was to "provide incentives for long-term employment and to secure and retain capable human resources" of indefinite-term contract employees, which became a topic of discussion as the "securing capable human resources" argument. Based on such a logic, the mere fact that an indefinite-term contract does not have a fixed-term, and thus, long-term employment is expected, may lead to allow preferential treatment for indefinite-term contract employees,⁶ which may become "a universal justification for the disparity in working conditions between regular and non-regular employees," and the purpose of Article 20 of the Labor Contracts Act may be subverted.

This judgment stated that "bonuses are paid to regular employees for the purpose of securing and

retaining personnel who can perform their duties as regular employees,” so at first glance, it could be read as a judgment in line with the argument of “securing capable human resources.” However, if we analyze the logical structure of the Supreme Court’s judgment, we can see that it does not recognize the reasonableness of the difference in working conditions only because “there is no fixed-term.”

First of all, it is recognized that the bonus in question is calculated based on the basic pay of the indefinite-term contract employees. It is also emphasized that the basic pay of indefinite-term contract employees is supposed to be raised in accordance with the number of years of service, and has the character of ability-based wage in accordance with the improvement in ability to perform their duties accompanying years of service. Therefore, the bonus, which is calculated based on the basic pay, also has the character of ability-based wage. In contrast, since X and other *arubaito* employees are not employed under the ability-based wage system, the non-payment of bonuses, which is characterized as ability-based wage, was not deemed unreasonable.

Some may criticize that even if bonuses can be characterized as part of the ability-based wage, what is justified by this is that bonuses are increased in accordance with years of service, but this does not immediately justify not paying bonuses to *arubaito* employees such as X. Looking at the overall structure of the court’s judgment, what justifies the non-payment of bonus to X is the differences in the personnel management between *arubaito* employees and regular employees, namely, regular employees’ duties are “of a higher level of difficulty and responsibility” and they are subject to “personnel transfers conducted for the purpose of developing and utilizing human resources.” All the following facts are also factors to be considered to justify not paying bonuses to X and other *arubaito* employees: the fact that, compared to the comparator, there were certain differences in the content of duties, and in the scope of changes in the content of duties and assignment, as well as facts mentioned in “other circumstances,” including the fact that regular-

employees laboratory clerks designated as comparator have difference from other regular employees in the content of duties and the scope of changes, and that there is a system to promote *arubaito* employees to regular employees. Therefore, it can be said that the court in this case came to the conclusion that the non-payment of bonuses to X was not unreasonable after considering all the factors stipulated in Article 20 of the Labor Contracts Act.

(5) Existence of a promotion system to regular employees and its impact on determination of unreasonable differences in working conditions

In this case, the fact that there is a system to promote fixed-term contract employees to regular employees was considered as a factor to deny the unreasonableness of the difference in working conditions between fixed-term contract employees and regular employees. If such a judgment is made from the perspective of labor policy, with the aim of encouraging employers to introduce such a promotion system as one of the measures to convert non-regular employees into regular ones, it cannot be said to be inappropriate. However, Article 20 of the Labor Contracts Act is a regulation to redress unreasonable disparities in working conditions between fixed-term and indefinite-term contract employees while fixed-term contract employees are still fixed-term contract employees, rather than to convert them into indefinite-term contract employees. It is one thing for fixed-term contract employees to be able to improve their working conditions through the promotion system for regular employees, and for fixed-term contract employees to have their unreasonable disparity in working conditions corrected through Article 20 of the Labor Contracts Act rather than through promotion to regular employees is another. Therefore, the promotion system should not be regarded as a factor that affects the judgment of unreasonableness of the difference in working conditions between fixed-term contract employees and regular employees.

1. The term “*arubaito*” is commonly used in Japan when

students or other casual workers are employed in casual work as non-regular employees, and does not necessarily refer to part-time work. This word originally comes from the German word *Arbeit*, which was used in Japan by college students engaging in paid work while pursuing their studies.

2. *Shokutaku* usually refers to former employees who are rehired under fixed-term or part-time contracts after reaching their mandatory retirement age.

3. <https://www.mhlw.go.jp/stf/shingi/2r985200000204n5-att/2r985200000204q1.pdf>.

4. See Yuichiro Mizumachi, “Fugori-sei o dou handan suruka? *Osaka ika yakka daigaku* jiken, *Metoro komasu* jiken, *Nippon yubin* (Tokyo, Osaka, Saga) jiken, Saiko sai 5 hanketsu kaisetsu” [How to judge unreasonableness? Commentary on the Supreme Court’s 5 Judgments in the *Osaka Medical and Pharmaceutical University* case, the *Metro Commerce* case, and the *Japan Post (Tokyo, Osaka, Saga)* case] *Rodo Hanrei*, no.1228, (November 2020): 5–32.

5. Article 8. An employer must not create differences between the basic pay, bonuses, and other treatment of the part-time/fixed-term employees it employs and its corresponding treatment

of its employees with standard employment statuses that are found to be unreasonable in consideration of the substance of the duties of those part-time/fixed-term employees and employees with standard employment statuses and the level of responsibility associated with those duties (hereinafter referred to as the “content of duties”), the scope of changes in the content of duties and assignment, and other circumstances, that are found to be appropriate in light of the nature of the treatment and the purpose of treating employees in that way.

6. See Takahito Ohtake, “Metoro komasu jiken saikosai hanketsu no kaisetsu” [Commentary on the Supreme Court judgment in the *Metro Commerce* case], *Monthly Jurist*, no. 1555 (March 2021): 57.

The *Osaka Medical and Pharmaceutical University (former Osaka Medical University)* case, Judgements of the Supreme Court of Japan, https://www.courts.go.jp/app/hanrei_jp/detail2?id=89767. See also *Rodo Hanrei (Rohan, Sanro Research Institute)* 1229, pp. 77–89, and *Journal of Labor Cases (Rodo Kaihatsu Kenkyukai)* no.104, November 2020, pp. 6–7 and pp. 21–26. (only available in Japanese).

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<https://www.jil.go.jp/english/profile/zhong.html>